100405

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM [redacted] 1923

No. [redacted] 112

RED CROSS LINE, PETITIONER,

vs.

ATLANTIC FRUIT COMPANY.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK.

PETITION FOR WRIT FILED AUGUST 31, 1923.

CERTIORARI AND RETURN FILED DECEMBER 26, 1923.

(29,118)

(29,118)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 568.

RED CROSS LINE, PETITIONER,

vs.

ATLANTIC FRUIT COMPANY.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 2, 1923.

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a Received copy of the within record this 311st day of August, 1922. Hunt, Hill & Betts.

STATE OF NEW YORK,
County of New York, ss:

Vincent J. Di Bello being duly sworn deposes and says that he is over the age of 21 years. That on the 31st day of Aug., 1922, deponent delivered a copy of the within record to Hunt, Hill & Betts, 120 Broadway, New York City, attorneys for respondent herein, by leaving same with E. Keenan, a person in charge of said office. Vincent J. Di Bello.

Sworn to before me this 31st day of Aug., 1922. Reginald B. Williams, Notary Public, New York Co., Cl'k's No. 328. [Seal of Reginald B. Williams, Notary Public, New York County.]

1 **Supreme Court, New York County.**

In the Matter of the Petition of RED CROSS LINE for an Order Directing ATLANTIC FRUIT COMPANY to Proceed to Arbitration.

Notice of Appeal.

Please take notice that Atlantic Fruit Company hereby appeals to the Appellate Division of the Supreme Court, First Department, from the order of the Special Term of the Supreme Court, New York County, herein entered in the office of the Clerk of New York County on the 11th day of August, 1921, compelling the said Atlantic Fruit Company to proceed to arbitration and to appoint its arbitrator on or before the 20th day of August, 1921, and this appeal is taken from each and every part of said order.

Dated, New York, August 16, 1921. Hunt, Hill & Betts, Attorneys for Atlantic Fruit Company, 120 Broadway, Borough of Manhattan, New York City.

To William F. Schneider, Esq., Clerk of the County of New York; Loomis, Barrett & Jones, Esqs., Attorneys for Petitioner, Red Cross Line, 52 Broadway, New York.

2 **Order Compelling Arbitration.**

[Filed Aug. 11, 1921.]

[Title omitted.]

The above named petitioner having moved this Court by a notice of motion returnable April 21, 1921, for an order compelling arbitration and said motion having been adjourned and having duly

come on to be heard July 20, 1921, and after hearing Mr. Home L. Loomis in support of the said motion and Mr. John W. Crandal in opposition thereto and it appearing from the papers hereinafte mentioned that the Red Cross Line and the Atlantic Fruit Com pany on or about the 28th day of November, 1919, entered into contract in which it was provided as follows:

"23. That should any dispute arise between Owners and Charterers the matters in dispute shall be referred to three persons in New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision, or that of any two
3 of them, shall be final and for the purpose of enforcing any award, this agreement may be made a rule of Court."

and that pursuant to said contract the Red Cross Line duly ap pointed its arbitrator and that the Atlantic Fruit Company failed and refused to appoint its arbitrator,

Now, on reading the said notice of motion, the petition of the Red Cross Line, and exhibits attached thereto, the affidavit of Vin cent J. Di Bello verified the 13th day of April, 1921, the answe of Atlantic Fruit Company to the petition, the answering affidavit of Mr. T. O. Muller verified the 6th day of July, 1921, and of Mr John W. Crandall, verified the 1st day of July, 1921, the petition bond and notice of removal, and the order of Hon. A. N. Hand entered in the District Court of the United States for the Southern District of New York on the 27th day of June, 1921, remanding the petition herein to this Court, the same constituting papers num bered 1 to 18 inclusive as filed herein, and due deliberation hav ing been had, upon filing the opinion of the Court, it is, on motion of Loomis, Barrett & Jones, attorneys for the petitioner,

Ordered that the said motion be and the same hereby is in all respects granted with ten dollars costs, and it is further

Ordered that the Atlantic Fruit Company proceed to arbitration as provided for in the contract aforesaid and appoint its arbitrator on or before the 20th day of August, 1921, and within two days thereafter duly notify the petitioner of its said appointment.

Entered. W. P. B., J. S. C.

4 **Notice of Motion.**

[Title omitted.]

SIRS: Please take notice, that upon the annexed petition verified the 12th day of April, 1921, the undersigned will move this Court at Special Term, Part I, thereof to be held in the County Court House in the Borough of Manhattan, City of New York, on the 21st day of April, 1921, at 10:15 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order directing you to proceed to the arbitration of the claim of the petitioner herein as set forth in the annexed petition pursuant to Chapter 275 of the Laws of 1920, and granting such other and further relief as

the premises as to the Court may seem just and proper. Yours &c., Loomis, Barrett & Jones, Attorneys for Petitioner, 52 Broadway, Borough of Manhattan, New York City. To Atlantic Fruit Company, 61 Broadway, New York City.

5 [Title omitted.]

Petition of Red Cross Line.

To the Supreme Court of the State of New York, County of New York:

The petition of Red Cross Line, by its agent Bowring & Company, respectfully shows and alleges:

First. That at all the times hereinafter mentioned the petitioner was and still is a foreign corporation, duly organized and existing under the laws of the United Kingdom of Great Britain and Ireland, engaged and engaging solely in foreign commerce, and represented in the port of New York by an agent located at 17 Battery Place, New York City.

Second. That at all the times hereinafter mentioned Bowring & Company was and still is a domestic corporation and at all
6 the times hereinafter mentioned was and still is the lawful and duly constituted agent of the Red Cross Line, the petitioner herein.

Third. On information and belief that at all the times hereinafter mentioned the Atlantic Fruit Company was and still is a foreign corporation doing business in the City and State of New York by its agent, Bennett, Hvoslef & Company, and that at all the times hereinafter mentioned was the chartered owner of the Norwegian Steamship Runa.

Fourth. That on or about the 28th day of November, 1919, in the City of New York, the petitioner, Red Cross Line, by its agent, Bowring & Company, made and entered into a written contract or charter-party with the said Atlantic Fruit Company, whereby the said Atlantic Fruit Company as chartered owner of the steamship Runa agreed to let, and the petitioner as charterer agreed to hire, said steamship for one (1) round trip between any safe port and/or ports in Canada and/or other British possessions not north of the River St. Lawrence and/or the United States for the consideration of twenty-five thousand dollars ($25,000) per month as is more fully set forth in said contract or charter-party, a copy of which is hereto attached marked Exhibit A and made a part of this petition.

Fifth. That among other provisions in said charter-party is was provided as follows:

"3. That in the event of loss of time from deficiency of men or stores, breakdown of machinery or damage preventing the
7 working of the steamer for more than twenty-four hours at sea, the payment of hire shall cease until she be again in an efficient state to resume her service, re-delivered at place of accident or allowance therefor, and should she in consequence put into any port other than that to which she is bound, the port charges and

pilotages at such port shall be borne by steamer's owners. Also if any loss of time from crew or stores not being on board in time, or from repairs to hull and machinery, which are for Owner's account, not being complete after cargo and coals are on board and hour of sailing has been fixed by charterers and notice given to Captain, the time is lost to the Owner's account.

11. That the Captain shall prosecute his voyage with the utmost despatch, and take every advantage of wind by using the sails with a view to economize fuel, and shall render all possible assistance with ship's crew and boats. * * *

19. * * * The Act of God, the King's enemies, Fire, Restraints of Princes, Rulers and People and all other dangers and accidents of the seas, rivers, machinery, boilers and steam navigation throughout this Charter Party always excepted."

Sixth. That it was further provided in said charter-party in Article 23 and 31 thereof as follows:

"23. That should any dispute arise between Owners and Charterers, the matters in dispute shall be referred to three per-
8 sons in New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision, or that of any two of them, shall be final and for the purpose of enforcing any award, this agreement may be made a rule of Court. * * *

31. Where the word 'Owners' appears in this charter-party the words 'Chartered Owner' to apply."

Seventh. That in accordance with said charter-party the said steamship Runa was delivered to your petitioner by the said Atlantic Fruit Company at the port of Philadelphia on the 29th day of November, 1919, and entered upon the performance of the said charter-party.

Eighth. On information and belief that on the 6th day of December, 1919, the said steamship Runa cleared from the said port of New York for the port of St. Johns, normally an eight days run from New York. But her master did not prosecute said voyage with the utmost despatch. Although the steamer was ready to proceed in the evening of the 6th day of December, 1919, and the master was ordered by the charterer to proceed at that time, the master refused and neglected so to do until the following day, to wit, the 7th day of December, 1919. And thereafter, when within approximately 100 miles of his destination, to wit, St. Johns, Newfoundland, the master turned the said steamer about and proceeded to the Azores, distant from St. Johns about 1,300 miles, approximately the same distance as that between New York and St. Johns. At the Azores the said master kept the said steamer for a period of 21
9 days, leaving there only on the 5th day of January, 1920, and finally arriving at St. Johns on the 14th day of January, 1920, after having consumed on said trip from New York to St. Johns a total of 39 days instead of the number the charterer was reasonably entitled to anticipate, to wit, eight days. Both at the Azores and at St. Johns the master took aboard said steamer Runa excessive quantities of coal not required for the remainder of the

voyage even as prosecuted by the master. The said excess of coal over the quantity reasonably required amounted to 298 tons.

Ninth. That inasmuch as the chartered owner had under the said charter-party the right to withdraw the steamer from the charterer's service if the latter failed to pay hire in advance without offset or deduction at the times specified in said charter-party, and inasmuch as the charterer remained ignorant of the true state of facts set forth in paragraph Eighth above until the return voyage of the steamer from St. Johns had been concluded and extracts from the steamer's log had been furnished by the master and examined by the charterer, the latter had in the meantime, in order to prevent the earlier withdrawal of the steamer from its service and otherwise protect its rights, paid to the chartered owner under protest charter hire at the times stipulated in the said charter-party, including cost of fuel and other disbursements.

Tenth. That by reason of the facts set forth in paragraph Eighth above the petitioner overpaid to the chartered owner of the Runa hire and disbursements in the sum of Thirty-five thousand
10 two hundred fifty-six and 96/100 Dollars ($35,256.96), in which amount it was damaged and the payment of which sum on or about the 16th day of March, 1920, by letter to the said Bennett, Hvoslef & Company it duly demanded from the chartered owner, the said Atlantic Fruit Company, a copy of which letter is hereto attached marked Exhibit B and made a part of this petition.

Eleventh. That the said Atlantic Fruit Company has failed and refused to pay the said sum of Thirty-five thousand two hundred fifty-six and 96/100 Dollars ($35,256.96) or any part thereof, and has denied and disputed the facts set forth in paragraph Eighth above and has denied and disputed its liability in damages or to repay said overpaid charter hire to your petitioner from the causes therein alleged, as appears from a letter written by the said Atlantic Fruit Company to said Bennett, Hvoslef & Company under date of the 19th day of March, 1920, a true copy of which letter is hereto attached and made a part hereof and marked Exhibit B-1.

Twelfth. That because of the facts set out above, a dispute and controversy has arisen and now exists between your petitioner and the said Atlantic Fruit Company.

Thirteenth. That because of said dispute and controversy, in pursuance of said Article 23 of the said charter-party herein quoted, your petitioner on or about the 8th day of April, 1920, through its said agents by letter to Bennett, Hvoslef & Company, the said agents of the Atlantic Fruit Company, called upon and demanded
11 that their principal join with your petitioner in an arbitration of the said dispute, as provided by said charter-party, a copy of which letter is hereto attached marked Exhibit C and made a part of this petition.

Fourteenth. That thereafter and on or about May 4, 1920, said Bennett, Hvoslef & Company answered said letter of demand and enclosed a copy of a letter from their principal in which the said Atlantic Fruit Company stated that they would not submit the said dispute to arbitration. Copies of the said answer and the said copy

are hereto attached marked respectively Exhibit D and Exhib
and made a part of this petition.

Fifteenth. That thereafter, on or about May 10, 1920, your
tioner, through its said agents by letter to Bennett, Hvoslef &
pany, the said agents of the Atlantic Fruit Company, notified
Atlantic Fruit Company that it had chosen Mr. Richard D. Wri
to act as its arbitrator and that he had signified his willingne
accept such appointment and called upon the said Atlantic
Company to appoint its arbitrator in order that he and the said
trator of your petitioner might meet and choose the third and
ceed in accordance with the terms of said charter-party, a cop
which letter is hereto attached marked Exhibit F and made a pa
this petition.

Sixteenth. That thereafter, on or about May 14, 1920, said
nett, Hvoslef & Company answered said letter of May 10, 1920,
enclosed a copy of a letter from the said Atlantic Fruit Compan
which letter the said Atlantic Fruit Company reiterated its in
tion not to arbitrate said dispute and controversy; copie
12 said answer and copy are hereto attached marked respecti
Exhibit G and Exhibit H and made a part of this petitio

Seventeenth. That the said Atlantic Fruit Company has contin
to refuse to arbitrate said dispute and controversy and to appoin
arbitrator to act with the arbitrator of your petitioner, as prov
by said Article 23 of said charter-party, and still so refuses.

Eighteenth. That your petitioner has duly performed all the te
and conditions on its part to be performed.

Nineteenth. That heretofore on or about May 27, 1920, the
tioner herein filed in this Court a petition substantially in conf
ity with and asking for the relief prayed for in this petition;
thereafter the Appellate Division of this Court held that the arb
tion law of the State of New York was not applicable to contr
executed prior to the enactment of said law, whereupon petitio
contract having been executed prior to the said enactment it w
drew its petition pending the decision of the Court of Appeals on
question. In the meanwhile the said Atlantic Fruit Company
ing filed a libel against your petitioner for alleged unpaid cha
hire, etc., your petitioner answered said libel and pleaded as a c
plete defence the said provision to arbitrate; that as the said C
of Appeals has now reversed the said decision of the said Appel
Division, your petitioner is hereby filing its petition anew.

Wherefore, your petitioner prays that an order be made, comma
ing and directing said Atlantic Fruit Company to join
13 your petitioner in the arbitration of said dispute in accorda
with the terms of the charter-party pursuant to the Arbi
tion Law of New York, Chapter 275 of the Laws of 1920, and
such other and further relief as to the Court may seem just
proper. Bowring & Company, by Lowell L. Richards, Direc
Agent for Petitioner.

STATE OF NEW YORK,
County of New York, ss:

Lowell L. Richards, being duly sworn, deposes and says that he is a director of Bowring & Company, a domestic corporation; that he resides at 320 West 87th Street, New York City; that he has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. Deponent further says that the ground of his belief as to all matters not stated upon knowledge, are reports received from the master of the Runa following his return to New York from St. Johns, and extracts from his log, and reports from the petitioner's agents made to deponent in the course of duty. That the reason this verification is not made by an officer of the Red Cross Line is that it is a foreign corporation and has no officer within the jurisdiction and all the material allegations are within the knowledge of the deponent. The reason that it is
14 made by deponent is that the agent of petitioner is a domestic corporation and deponent is a director therein. Lowell L. Richards.

Sworn to before me this 12th day of April, 1921. Reginald B. Williams, Notary Public, New York County.

Exhibit A to Petition.

Attach to Charter-Party No. 5978.

Bennett, Hvoslef & Co., 18 Broadway, New York.

Copy.

Division of Operations, United States Shipping Board Emergency Fleet Corporation, Room 422 Custom House, New York.

December 4, 1919.

Bennett, Hvoslef & Co., 18 Bway., N. Y. City:

Name of Vessel: Norwegian SS. Runa.

Approval is hereby granted for: one round trip within trading limits as specified on charter party under Charter Party
15 dated Nov. 28, 1919 for: ——.
Charterers: Red Cross Line.
We hold your guarantee that: ——. (Sgd.) Paul Foley, Chartering Executive. CHS.ML.

Exhibit B to Petition.

From Bowring & Company, New York.

March 16, 1920.

Messrs. Bennett, Hvoslef & Co., Agents for the S. S. Runa and Her Time Chartered Owners.

DEAR SIRS: You will recall that all charter hire paid to you subsequent to the deviation of the Runa to the Azores during the course of her voyage from this port to St. Johns, Newfoundland, commencing here 7 December, 1919, was paid to you under protest, in view of the fact that we were without means of determining at the time such charter hire was paid the facts regarding the deviation. We have now gone over the records in the case, including the abstract of log furnished us, and we feel there can be no question that the time lost by the vessel in proceeding to the Azores, in remain-
16 ing there and in returning thence to St. John's, should be for owners' account.

All of the circumstances we feel justify us in the belief that the Captain did not, as he was obliged to do under the charter-party, "prosecute his voyage with the utmost despatch." Had he done so he would have been in St. John's in advance of the storm that he claims drove him down to the Azores. It appears from his own version that he was only sixty miles off St. John's when the storm broke. In view of this fact it is plain that had he left this port at the time when he was ordered to leave he would have arrived safely at St. John's well in advance of the storm. The Runa was fully laden and ready to leave New York and the master was ordered to proceed in the early evening of Saturday, 6 December, 1919. The master refused to do so, however, stating that he desired to remain here until the next morning and went, as we understand, to the theater that night with his wife, who later accompanied him aboard the vessel for St. John's. As a result he did not get away until 9.30 the next morning. There was here at the outset of the voyage therefore an entirely needless delay of more than twelve hours, which time if employed pursuant to our orders in the prosecution of the voyage would have enabled him to reach St. John's, as above stated, without difficulty and well in advance of the storm.

Apart from the consideration just mentioned, we can find nothing in the circumstances disclosed by the log that could have justified the captain in turning the Runa's stern to the wind and proceeding out of his course to the Azores instead of continuing to head into the wind and attempting to cover the sixty remaining miles between his position and St. John's. Prudent seamanship could, we sup-
17 pose, have dictated no other course. It has been suggested that it was because of the presence on board his ship of his wife that the master pursued a contrary course and put around for the Azores. This fact may have accounted for the captain's strange behavior. Otherwise his action in our view is inexplicable. Whether

ıe foregoing be the real reason for the captain's behavior or not we re clearly convinced that there was nothing in the circumstances resent to justify the captain in proceeding on the charterer's time to ıe Azores and we have no doubt that after a full consideration of ıe facts you will agree with us.

We are therefore presenting to you our claim for overpaid charter re in the sum of $25,683.35, and for extra coal consumed over and ove the reasonable requirements of the voyage, if the deviation ıd not occurred, in the sum of $9,466, plus Horta disbursements $152.61, making a total of $35,256.96, all as per the enclosed emorandum.

Kindly favor us with an early remittance to cover the same, and lige, Yours very truly, Bowring & Company. (Sgd.) Chas. W. wring, Director.

Exhibit B-1 to Petition.

Atlantic Fruit Company.

New York City, March 19, 1920.

Subject: SS. "Runa."

ssrs. Bennett, Hvoslef & Co., 18 Broadway, New York, N. Y.

DEAR SIRS: We acknowledge receipt of your favor of the 17th stant, enclosing letter from Messrs. Bowring & Co., together with tement of claim against the SS. "Runa," amounting to 5,256.96.

After having given careful consideration to this claim, we have rived at the conclusion that we cannot assume any responsibility the matter, and you will please so advise Messrs. Bowring & mpany. Yours very truly (Sgd.) T. O. Muller, Vice-President. pies. KL 3-20-20.

Exhibit C to Petition.

From Bowring & Company, New York.

April 8th, 1920.

ssrs. Bennett, Hvoslef & Company, as Agents of the Atlantic Fruit Company.

SS. "Runa."

DEAR SIRS: Replying to your letters of the 20th and 31st ultimo, beg to state that in view of the refusal of your principal to ognize our claim for overpaid charter hire, coal, port charges, ., we shall have to proceed to enforce our rights under the charter- rty. We, therefore, hereby call upon your principals to join with in an arbitration of the dispute, as provided for in the charter-

party. We cannot, of course, pay the small balance of hire that you claim is still due you until the entire matter has been decided in arbitration or otherwise.

We await your advices as to how soon we can proceed to the arbitration of the matter. Yours very truly, Bowring & Company. (Sgd.) Chas. W. Bowring, Director.

20. **Exhibit D to Petition.**

Bennett, Hvoslef & Co., New York.

May 4, 1920.

Messrs. Bowring & Company, 17 Battery Place, City.

SS. "Runa."

GENTLEMEN: We enclose, for your perusal, copy of letter received from the Atlantic Fruit Company. Yours very truly (Sgd.) Bennett, Hvoslef & Co. Enclosure.

Exhibit E to Petition.

Atlantic Fruit Company.

New York City, May 1st, 1920.

Messrs. Bennett, Hvoslef & Company, No. 18 Broadway, New York City.

DEAR SIRS: We have considered carefully Messrs. Bowring & Company's letter with reference to the dispute which has arisen on the S. S. Runa and have decided not to arbitrate, but that if
21 Messrs. Bokring & Company believe they have a case we prefer to have the matter settled in a legal manner, in order that the owners may be called into the case. Yours very truly (Sgd.) T. O. Muller, Vice-President. Copied. KL-5-4-20.

Exhibit F to Petition.

From Bowring & Company, New York.

May 10, 1920.

Messrs. Bennett, Hvoslef & Co., 18 Broadway, New York City.

DEAR SIRS: We duly received your letter of the 4*st* inst., enclosing a copy of the letter received by you from T. U. Muller, Vice-President of the Atlantic Fruit Company, under date of the 1st inst.

We note that the Atlantic Fruit Company takes the position that it will not arbitrate this controversy. We are, therefore, pointing out to you, as their agents, that Clause 23 of the Charter Party requires them to join in an arbitration. We quote extract from the clauses in question:

"That should any dispute arise between Owners and Charterers the matters in dispute shall be referred to three persons ew York, one to be appointed by each of the parties hereto, and third by the two so chosen; their decision, or that of any two em, shall be final and for the purpose of enforcing any award, agreement may be made a rule of court. * * *

e, therefore, hereby notify you that we recognize no right whatr in the Atlantic Fruit Company to refuse to arbitrate in acnce with the terms of the Charter Party and we hereby notify that we have chosen Mr. Richard D. Wrigley to act as our artor in the arbitration and he has signified his willingness to t such appointment.

e call upon the Atlantic Fruit Company now to appoint its artor in order that he and ours may meet and choose the third in dance with the terms of the Charter.

ndly notify us at your earliest convenience of the name of the rator chosen by the Atlantic Fruit Company. Very truly yours, Cross Line, Bowring & Company, (Sgd.) Chas. W. Bowring, Dir, as Agents.

Exhibit G to Petition.

Bennett, Hvoslef & Co.

New York, May 14, 1920.

s. Bowring & Company, 17 Battery Place, New York City.

NTLEMEN:

Ss. "Runa."

further references to your letter of May 10th, we now beg to se copy of communication received this morning from the At- Fruit Company, the contents of which explains itself. Yours truly, (Sgd.) Bennett, Hvoslef & Co. Enclosure.

Exhibit H to Petition.

Atlantic Fruit Company.

New York, May 13, 1920.

ett, Hvoslef & Co., 18 Broadway, New York City.

AR SIRS:

Ss. "Runa."

are in receipt of your favor of the 11th inst. enclosing copy of letter from Bowring & Co., which we have carefully read.

As already advised you, we do not feel that we could arbitrate this matter as it concerns the Owners of the steamer and urselves. We, of course, regret exceedingly that the voyage d so disastrous to our friends, Bowring & Co. Very truly yours,) T. O. Muller, Vice-President.

Affidavit of Vincent J. Di Bello.

[Title omitted.]

STATE OF NEW YORK,
County of New York, ss:

Vincent J. Di Bello, being duly sworn, says that he is a clerk in the office of Loomis, Barrett & Jones, attorneys for the petitioner herein; and that on the 13th day of April, 1921, at No. 61 Broadway, Borough of Manhattan, City of New York, deponent being then more than twenty-one years of age, he served the annexed notice and
25 petition personally on the above named Atlantic Fruit Company by delivering copies thereof to Henry B. Mendenhall personally and leaving the same with him, and that he knew said Henry B. Mendenhall to be at that time the Secretary of the said Atlantic Fruit Company and knew the corporation so served to be the company mentioned and described in the said notice and petition as the respondent in this proceeding and the person to be served. Vincent J. Di Bello.

Sworn to before me this 13th day of April, 1921. Reginald B. Williams, Notary Public, etc. [Seal.]

Answer to Petition.

[Title omitted.]

The answer of Atlantic Fruit Company to the petition of Red Cross Line respectfully shows and alleges as follows:

26 First. It admits the allegations set forth in paragraph marked "First" of the petition herein.

Second. It admits that at the times stated in the petition, Bowring & Company was the agent of the petitioner, but denies any knowledge or information sufficient to form a belief as to the other allegations set forth in paragraph marked "Second" of the petition herein.

Third. It admits that at the times stated it was and is a foreign corporation doing business in New York and was the chartered owner of the Norwegian Steamship "Runa," but, except as admitted, it denies the allegations set forth in paragraph marked "Third" of the petition herein.

Fourth. It admits that the petitioner and it entered into a charter party for the steamship "Runa" dated on or about November 28, 1919, but for greater certainty as to the terms of said charter party, it begs leave to refer to the original thereof.

Fifth. It admits that the sections of the charter party set forth in paragraph "Fifth" of the petition are correct in substance, but for a greater certainty, begs leave to refer to the original of said charter party.

Sixth. It admits that the clauses of the said charter party set forth

paragraph "Sixth" of the petition are substantially correctly
ted, but for greater certainty, begs leave to refer to the original of
charter party.

eventh. It admits the allegations set forth in paragraph marked
"Seventh" of the petition herein.

Eighth. It denies any knowledge or information sufficient
to form a belief as to the matters set forth in paragraph
rked "Eighth" of the petition herein and therefore denies the
e, and further alleges that the pilot, who was appointed by the
tage authorities in the port of New York, and whose employment
compulsory by law, refused to take the Steamship "Runa" out
ea on the evening of December 6, 1919, on the ground that it
not safe to do so. It further alleges that whatever communica-
s took place between the petitioner and the master of the "Runa"
e directly with the master and not with him through Atlantic
it Company.

Ninth. It denies any knowledge or information sufficient to form
elief as to the allegations set forth in paragraph marked "Ninth"
he petition herein, and therefore denies the same.

Tenth. It denies the allegations set forth in paragraph marked
enth" of the petition herein, except that it admits and alleges
t the petitioner demanded payment of its alleged damages from
antic Fruit Company and that said payment was refused.

Eleventh. It admits and alleges that it sent to the petitioner a let-
of which Exhibit B-1 attached to the petition is apparently a
y, but begs leave to refer to the original; that it has refused to
the sum demanded by the petitioner and has denied and dis-
ed the facts and denied and disputed its liability, but, except as
nitted, it denies the allegations set forth in paragraph marked
"Eleventh" of the petition herein.

Twelfth. It admits the allegations set forth in paragraph
"Twelfth" of the petition.

Thirteenth. It admits that the letter referred to in paragraph
hirteenth" of the petition was sent to Messrs. Bennett, Hv-slef &
mpany, but for certainty as to its contents, begs leave to refer to
original. It denies that said Bennett, Hvoslef & Company were
are its agents.

Fourteenth. It admits that thereafter it wrote a letter to Messrs.
nnett, Hvoslef & Company, of which Exhibit E, attached to the
ition herein apparently is a correct copy, but for certainty, begs
ve to refer to the original thereof. It denies that Bennett, Hvoslef
Company were or are its agents, as set forth in paragraph marked
ourteenth" of the petition herein.

Fifteenth. It admits that a letter, of which Exhibit F, attached
the petition is apparently a copy, was sent to Bennett, Hvoslef
Company, but for greater certainty begs leave to refer to the orig-
l thereof. It denies that Bennett, Hvoslef & Company were or
its agents.

Sixteenth. It admits the allegations set forth in paragraph marked
ixteenth" of the petition except that it begs leave to refer to the
ginals of the letters referred to in said paragraph, for certainty as
their contents.

Seventeenth. It admits and alleges that it has refused to arbitrate said dispute and controversy, the reasons for its refusal being more fully set forth in separate and distinct defense herein.

29 Eighteenth. It denies the allegations set forth in paragraph marked "Eighteenth" of the petition herein.

Nineteenth. It admits the allegations set forth in paragraph marked "Nineteenth" of the petition herein, except that it denies any knowledge or information sufficient to form a belief as to whether or not said petition was filed.

Further answering the petition herein and for a further separate and distinct defense thereto Atlantic Fruit Company alleges as follows:

Twentieth. It denies each and every allegation set forth in the petition herein, except as hereinbefore expressly admitted.

Twenty-first. That the dispute or controversy between the parties hereto, set forth in the petition and answer, being one arising out of a charter party, is a maritime dispute and is a cause of "Admiralty and Maritime Jurisdiction" over which causes the Courts of the United States, pursuant to Article III, Section 2 of the Constitution of the United States, and Sections 24 and 256 of the Judicial Code, are given exclusive jurisdiction, saving to suitors only the right of common law remedies where the common law is competent to give them.

Section II of Article III of the Constitution of the United States reads in part as follows:

"The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction."

30 Judicial Code, Section 24, as amended, U. S. Comp. Stat. Par. 991, provides as follows:

"The district courts shall have original jurisdiction as follows: * * * (3) Of all civil causes of admiralty and maritime jurisdiction saving to suitors in all cases the right of common law remedy where the common law is competent to give it and to claimants the right and remedies under the Workmen's Compensation Law of any state."

Section 256 of the Judicial Code, U. S. Comp. Stat., provides as follows:

"The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the Courts of the several states; * * *"

That the New York Statute, entitled "An Act in Relation to Arbitration, Constituting Chapter 72 of the Consolidated Laws," being Chapter 275 of the Laws of 1920 of the State of New York, provides an additional remedy unknown to the common law, for the settlement or adjustment of disputes by compelling parties to arbitrate them, if they have agreed to do so. Such a remedy is not applicable to disputes within the Admiralty and Maritime Jurisdiction of the United States Courts. If the said Statute of the State of New York is designed to cover controversies of a maritime nature such as the one set up in the petition herein, which are within the Admiralty

and Maritime jurisdiction, it is contrary, in that respect, to the Constitution of the United States and the said laws of the United States enacted pursuant to the Constitution.

iat the respondent herein, on June 4, 1920, filed a libel against petitioner in the United States District Court, for the Southern ict of New York, claiming a balance of charter hire due under charter party amounting to $4,518.98, and process therein was d on the petitioner herein on June 5, 1920. That the peti- r herein has already appeared in that action and filed its answer. venty-second. That the respondent herein was not the owner of teamship "Runa," but the time charterer thereof under a charter practically identical with the charter party between the parties n. Under said charter party the entire navigation of the Steam- "Runa" was under the control of the master, officers and crew inted and employed by the Norwegian owner of said Steamship, Waage and not by the respondent herein, and if there was any or neglect on the part of the master of the said steamer in re- to her clearing, sailing navigation, choice of course or otherwise, s the fault and neglect of her Norwegian owner who was not a ent of the State of New York.

iat under the law and practice of the United States District ts in Admiralty, particularly Rule 56 of the United States Su- e Court in Admiralty and Rule 18 of the United States District t for the Southern District of New York a remedy is given to a ndant or respondent against whom a suit is instituted in the Ad- lty Court whereby he may bring in on petition the party claimed ultimately liable or responsible for the fault, neglect or breach ntract upon which the suit is brought. In case the party sought to be brought in is a non-resident, a foreign attachment may be issued against his property within the jurisdiction and his appearance enforced in that manner.

he proper tribunal for the hearing of the dispute between these es arising out of the said charter party is the United States Dis- Court for the Southern District of New York in which the claims e sub-charter, charterer and owner of the Steamship "Runa" can ll heard in one action and their respective rights finally deter- ed.

Therefore, the respondent prays that the petition herein be dis- ed with costs, and that the relief demanded by the petitioner be ed, on the ground that the Arbitration Law of New York, Chap- 75 of the Laws of 1920 is not intended to apply to disputes within Admiralty and Maritime jurisdiction of the United States Courts, as the one set up in the petition and answer herein, and on the nd that, if intended to so apply, the said Arbitration Law of the e of New York is repugnant to Article III, Section 2 of the Con- tion of the United States; to Section 24 of the Judicial Code of United States, Subdivision Third, and to Section 256 of the icial Code of the United States, Subdivision Third. Hunt, Hill & s, Attorneys for Respondent, Atlantic Fruit Company, 120 Broad- , Borough of Manhattan, New York City.

33 STATE OF NEW YORK,
County of New York, ss:

T. O. Muller, being duly sworn, deposes and says: That he is the President of Atlantic Fruit Company, the respondent herein, that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Deponent further says that the reason why this verification is not made by the respondent but is made by the deponent is that the respondent is a foreign corporation.

The sources of the deponent's information and the grounds of his belief as to all matters therein stated to be alleged upon information and belief are as follows: The charter party, records and correspondence in deponent's possession and information obtained by deponent as an officer of the respondent, Atlantic Fruit Company. T. O. Muller.

Sworn to before me, this 6th day of July, 1921. W. E. Hardin, Notary Public, Kings County, No. 311. Kings County Register's No. 3059. Certificate filed in New York County No. 43. New York County Register's No. 3015. My commission expires March 30th, 1923. (Seal.)

34 **Affidavit of T. O. Muller.**

[Title omitted.]

STATE OF NEW YORK,
County of New York, ss:

T. O. Muller, being duly sworn, deposes and says: I am the President of Atlantic Fruit Company, the respondent herein, which is a corporation organized and existing under the laws of the State of Delaware, and has an office at No. 17 Battery Place, Borough of Manhattan, City, County and State of New York.

The deponent denies that there is any sum whatever due to the petitioner herein, but on the contrary the petitioner owes to the respondent the sum of $4,518.99 balance due for coal, removal of fruit fittings and charter hire, under the said charter party referred to in the petition herein, for which sum the respondent has commenced an action against the petitioner in the United States District Court, for the Southern District of New York, in which action the petitioner has appeared and filed its answer.

That the deponent has been advised by counsel for the respondent, Messrs. Hunt, Hill & Betts of No. 120 Broadway, Borough of Manhattan, New York City, that in their opinion the Arbitration
35 Law of New York, Chapter 275 of the Laws of 1920, which gives a remedy for the adjustment of controversies by compelling the parties to carry out any arbitration agreements which they may have entered into, does not apply to the dispute between

the petitioner and the respondent herein which has arisen out of said charter party, because this dispute is of a maritime nature, and consequently within the Admiralty and Maritime jurisdiction of the United States Courts, except insofar as common law remedies are saved to suitors by Section 24 of the Judicial Code, and that if the said New York Statute is intended to apply to disputes within the Admiralty and Maritime Jurisdiction of the United States Courts, such as the one set forth in the petition and answer herein, it is contrary to the Constitution of the United States, Article III, Section 2, and to Section 24 of the Judicial Code of the United States, Subdivision Third, and to Section 256 of the Judicial Code of the United States, Subdivision Third.

Wherefore, the deponent, on behalf of the respondent, requests that the petition herein be dismissed with costs, and that the relief asked for therein be denied. T. O. Muller.

Sworn to before me this 6th day of July, 1921. W. E. Hardin, Notary Public, Kings County, No. 311. (Seal.) Kings County Register's No. 3059. Certificate filed in New York County No. 46. New York County Register's No. 3015. My Commission Expires March 30, 1923.

36 **Affidavit of John W. Crandall.**

[Title omitted.]

STATE OF NEW YORK,
County of New York, ss:

John W. Crandall, being duly sworn, deposes and says:

I am a member of the firm of Hunt, Hill & Betts of No. 120 Broadway, Borough of Manhattan, New York City, attorneys for the respondent herein, Atlantic Fruit Company, and have charge of this action, and am familiar with the facts thereof.

The deponent has advised the respondent herein, through its president, Mr. T. O. Muller, that in the opinion of the deponent the Arbitration Law of the State of New York, being Chapter 275 of the Laws of 1920, does not apply to a dispute of a maritime nature, within the Admiralty and Maritime jurisdiction of the United States Courts, such as the one set forth in the petition and answer herein, which arises out of a charter party of the Norwegian Steamship "Runa."

Deponent has further advised the respondent that in the deponent's opinion if the said Act of the New York State Legis-
37 lature is intended to apply to disputes of the nature already indicated, it is repugnant in that respect to Article III, Section 2 of the Constitution of the United States, providing that the judicial power shall extend to all cases of Admiralty and Maritime jurisdiction and to Section 24 of the Judicial Code of the Courts of the several States, except where a Federal Court's original jurisdiction of all civil causes of Admiralty and Maritime jurisdiction, sav-

ing to suitors in all cases the right of a common law remedy, where the common law is competent to give it, and to Section 256 of the Judicial Code of the United States, Subdivision Third, providing that the jurisdiction vested in the Courts of the United States in causes of Admiralty and Maritime jurisdiction shall be exclusive of the Courts of the several States, except where a common law remedy is saved to suitors, because the said Statute provides an additional remedy for the adjustment of controversies between parties, not known to the common law, and hence not saved to suitors by the aforesaid saving clause.

Wherefore, deponent requests that the petition herein be dismissed with costs, and that the relief asked for by the petitioner be denied. John W. Crandall.

Sworn to before me this 1st day of July, 1921. Edna Rapallo, Notary Public, New York County No. 286. Certificate filed in Register's Office, N. Y. County No. 2235.

38 Supreme Court, New York County.

[Title omitted.]

Notice of Intention to Remove.

SIRS: Please take notice, that on April 20, 1921, we shall file in the office of the Clerk of the New York Supreme Court, New York County, the petition and bond hereto annexed, for the removal of the above entitled cause to the District Court of the United States for the Southern District of New York, and that we shall proceed to file the record herein according to the United States Statute in such cases made and provided.

Dated, New York, April 19, 1921. Yours, etc., Hunt, Hill & Betts, Attorneys for Atlantic Fruit Company, appearing specially herein. Office and Post Office Address, 120 Broadway, Borough of Manhattan, New York City.

To Messrs. Loomis, Barrett & Jones, Attorneys for Petitioner, 52 Broadway, New York City.

39 **Petition for Removal.**

[Title omitted.]

To the Supreme Court of the State of New York in and for the County of New York:

The petition of Atlantic Fruit Company of No. 61 Broadway, Borough of Manhattan, New York City, appearing specially herein, by Hunt, Hill & Betts, its attorneys, alleges and respectfully shows as follows:

First. That the above entitled action has been brought in the Supreme Court of the State of New York, in and for the County of New York and is now pending therein.

Second. That the Red Cross Line, the petitioner in the said action, is, as your petitioner is informed and believes, a foreign corporation duly organized and existing under the laws of the United Kingdom of Great Britain and Ireland, and represented in the Port of New York by an agent at No. 17 Battery Place, Borough of Manhattan, New York City, New York.

40 Third. That your petitioner is the sole party against which relief is demanded in the aforesaid action.

Fourth. That your petitioner is, and at all the times hereinafter mentioned, was a corporation duly organized and existing under the laws of the State of Delaware, with an office at No. 61 Broadway, Borough of Manhattan, City, county and State of New York.

Fifth. That the matter in dispute in this action as between Red Cross Line and your petitioner, Atlantic Fruit Company, exceeds the sum of Three Thousand Dollars ($3,000) exclusive of interest and costs.

Sixth. That this is a suit of a civil nature, at law or in equity, and has been brought in the Supreme Court of the State of New York, New York County. That a petition was served on your petitioner on April 13, 1921, returnable at Special Term, Part I, of the Supreme Court, New York County, praying that an order be made commanding and directing your petitioner to join with the petitioner therein in the arbitration of a dispute between said parties arising out of a time charter party on the Norwegian steamship Runa, entered into between them November 28, 1919, pursuant to an arbitration clause in said charter party, said action being begun against your petitioner under the provisions of the Arbitration Law of New York, Chapter 275 of the Laws of 1920. That a copy of said petition, omitting for the sake of brevity, the exhibits thereto attached, is hereto annexed and marked Exhibit A.

41 Seventh. That said petition hereto annexed sets forth a written charter party between Atlantic Fruit Company and Red Cross Line, dated November 28, 1919, whereby the Atlantic Fruit Company, as chartered owner of the Norwegian steamship Runa agreed to let said vessel to Red Cross Line and the Red Cross Line agreed to hire same for one round trip between any safe port and/or ports in Canada and/or other British possessions not north of the River St. Lawrence and/or the United States for the consideration of Twenty-five Thousand Dollars ($25,000) per month. The petition further alleges that the master of the steamship Runa did not prosecute the voyage from the Port of New York with the utmost despatch; that instead of sailing on the evening of December 6, 1919, he sailed on the morning of December 7, 1919. The petition further alleges that when within approximately one hundred miles of destination, namely St. Johns, Newfoundland, the master turned the Runa about and proceeded to the Azores, about thirteen hundred miles distant from St. Johns, where the master kept said vessel for twenty-one days, at the same time taking on an excess supply of coal which was not reasonably required and that the trip from New York to St. Johns consumed thirty-nine days instead of the usual time of eight days. The petition alleges that the Red Cross Line,

in order to prevent the withdrawal of the Runa from its service, paid under protest to Atlantic Fruit Company, the charter hire stipulated in said charter party, including cost of fuel and other disbursements,

and that the Red Cross Line was ignorant of the true facts
42 and that therefore it became entitled to the return of the sum of Thirty-five thousand two hundred fifty-six and 96/100 Dollars ($35,256.96), overpaid charter hire and disbursements. The petition alleges a demand upon your petitioner for the repayment of said sum and the refusal of your petitioner to pay same, and also a demand by Red Cross Line upon your petitioner for an arbitration of the dispute according to the charter party, and the refusal of your petitioner to arbitrate same and concludes with a prayer for an order directing your petitioner to arbitrate said dispute. That said petition is now on file with the Clerk of Special Term, Part I, of the New York Supreme Court, New York County.

Eighth. That the only parties in the State Court suit of Red Cross Line are said Red Cross Line and your petitioner, Atlantic Fruit Company.

Ninth. That this action was commenced by the service on Atlantic Fruit Company, on April 13, 1921, of a copy of the petition hereinbefore referred to. This petition is returnable on April 21, 1921, at 10:15 o'clock A. M. at Special Term, Part I, New York Supreme Court, New York County. That your petitioner has not yet made any answer to the petition, declaration or complaint of said Red Cross Line, and the time to so answer does not expire until the return thereof on April 21, 1921.

Tenth. That this suit of Red Cross Line arises under the Constitution or laws of the United States, because it is one of admiralty and maritime jurisdiction over which the Federal Courts are given original jurisdiction by the Constitution and the Judicial Code.

43 Eleventh. That the controversy in said suit is moreover one wholly between a citizen of a State and a foreign citizen or subject.

Twelfth. That your petitioner offers herewith a bond with good and sufficient surety for its entering in the District Court of the United States for the Southern District of New York, within thirty days from the date of the filing of this petition, a copy of the record of this suit and all pleadings and processes herein and also paying all costs which may be awarded by said District Court if said Court shall hold that the suit was wrongfully and improperly removed thereto.

Thirteenth. Your petitioner has not made any previous applications for the removal of this cause to any court or judge.

Wherefore, your petitioner prays that the said bond herewith submitted, be accepted and approved and that this suit may be removed to the District Court of the United States in and for the Southern District of New York, pursuant to the laws of the United States and that no further proceedings be had herein in this Court.

Dated April 19, 1921. Atlantic Fruit Company, by Allan H. Richardson, Vice-President, Petitioner. (Corporate Seal.) Hunt, Hill & Betts, Attorneys for Petitioner, appearing specially.

44 STATE OF NEW YORK,
County of New York, ss:

Allan H. Richardson, being duly sworn, deposes and says that he is the Vice-President of Atlantic Fruit Company, the petitioner named in the foregoing petition and that he has read said petition and knows the contents thereof and that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. That the reasons why this verification is made by deponent and not by petitioner is because the petitioner is a corporation and the deponent is the Vice-President thereof.

That the sources of deponent's information and the grounds of his belief as to the matters therein stated to be alleged upon information and belief are information derived by the deponent in his capacity as an officer of the petitioner, and statements in the verified petition of Red Cross Line. Allan H. Richardson.

Sworn to before me this 19th day of April, 1921. Estelle G. Stich, Notary Public, Bronx Co. (Seal.) Bronx Co. Clerk's No. 72. Bronx Co. Reg. No. 23. Cert. filed in N. Y. Co. N. Y. Co. Clerk's No. 171, Reg. No. 3224. Com. Expires March 30, 1923.

45–53 **"Exhibit A" to Petition for Removal.**

[Omitted; printed p. 5.]

54 **Bond on Removal.**

Know all men by these presents: That we, Atlantic Fruit Company, a corporation of the State of Delaware, with an office at 61 Broadway, New York City, as Principal, and the United States Fidelity and Guaranty Company, having an office and usual place of business at No. 47 Cedar Street, in the City of New York, County and State of New York, as Surety, are held and firmly bound unto Red Cross Line in the sum of five hundred ($500.00) dollars for the payment whereof, well and truly to be made unto the said Red Cross Line, its successors and assigns, we bind ourselves, and each of our successors and assigns, jointly and severally firmly by these presents.

Upon these conditions, the said Atlantic Fruit Company
55 having petitioned the Supreme Court of the State of New York, held in and for the County of New York, for the removal of a certain cause therein pending, wherein the said Red Cross Line is petitioner and the said Atlantic Fruit Company is defendant, to the District Court of the United States, for the Southern District of New York.

Now, if the said Atlantic Fruit Company shall enter into said District Court of the United States, within thirty (30) days from the date of the filing of said petition a certified copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said District Court of the United States if the said Court

shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void, otherwise to remain in full force and virtue.

In witness whereof, we have hereunto set our hands and seals this 19th day of April, 1921. Atlantic Fruit Company, by Allan H. Richardson, Vice President. (L. S.) United States Fidelity and Guaranty Company, by S. Frank Hedges, Attorney-in-fact. Attest: William H. Estwick, Attorney-in-fact. (Corporate Seal.)

(Acknowledgment by Atlantic Fruit Company and United States Fidelity and Guaranty Company.)

56 **Order Remanding Cause.**

At a Stated Term of the United States District Court for the Southern District of New York, held in the Court House in the Post Office Building in the Borough of Manhattan on the 27th day of June, 1921.

Present—Hon. Augustus N. Hand, District Judge.

In the Matter of the Petition of RED CROSS LINE for an Order Directing Atlantic Fruit Company to Proceed to Arbitration.

Petitioner's motion to remand having been heard and submitted to the Court for consideration, and the same having been fully considered, and the opinion of the Court having been delivered, it is, in accordance with said opinion,

Ordered that said motion be and the same is granted, and that this cause be and the same is remanded to the Supreme Court, Special Term, Part I, thereof, New York County, State of New York, for further proceedings. Augustus N. Hand, U. S. D. J.

57 & 58 **Opinion of Mr. Justice Burr.**

Matter of Red Cross Line.—This motion for an order directing Atlantic Fruit Company to proceed to arbitration in accordance with its agreement and pursuant to Chapter 275 of the laws of 1920 is granted, with $10 costs (see Matter of Nerkowitz, 230 N. Y., 261; Matter of Division, &c., 132 A. D., Third Dep't, Law Journal, May 27, 1921, 196 A. D., 206; Yeanerakopoulous, Law Journal, April 21, 1921, Gavegan, J.; People's Ferry Co. vs. Beers et al., 61 U. S., 393, 402; Sheppard vs. Steele, 43 N. Y., 52; Brockman vs. Hamill, 43 N. Y., 554, 558; In re The Ada, 250 Fed. Rep., 194-196; Matter of Red Cross Line, U. S. Dist. Ct., June 20, 1921, A. N. Hand, D. J.).

Stipulation Waiving Certification.

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the papers as hereinbefore printed consist of true and correct copies of the notice of appeal, the order appealed

m, and all the papers upon which the Court below acted in king the order appealed from, and the whole thereof, now on in the office of the Clerk of the County of New York.
Certification thereof, in pursuance of Section 1353 of the Code Civil Procedure is hereby waived.
Dated, August 30th, 1921. Hunt, Hill & Betts, Attorneys for antic Fruit Company-Appellant. Loomis, Barrett & Jones, Atneys for Petitioner-Respondent.

(Exhibit A Attached to Petition.)

Atlantic Fruit Company,

General Offices,

61 Broadway, New York City.

Fruit Time Charter.

Bennett, Hvoslef & Co.,

Steamship Agents & Ship Brokers,

18 Broadway, New York.

All commercial codes used.
Cable address: "Benvosco."

This charter party, made and concluded upon in the City of w York, the Twenty-eighth day of November, 1919, between Attic Fruit Co., Chartered Owners of the good steel Screw Steamp "Runa" of Christiania Cubic Capacity —, having accommodas for — Passengers (about 1,900 tons, Estimated Dead Weight acity) 1,611 tons gross register, having engines of 304 nominal se power, provided with proper certificates for hull and machin- and classed 1 A 1 Norwegian Veritas and the [Atlantic Fruit Red Cross Line,
]* ∧ with its general offices at New York, U. S. A.

Delivery:

Witnesseth, That the said Owners agree to let, and the said Charers agree to hire the said steamship from the time of delivery Philadelphia, Pa., with sufficient bunkers to take her to New York for a period of [months]* one (1) round trip —— she being on her delivery as above — ready to receive cargo, and being tight, staunch, strong and in every way fitted for the rice, having water ballast, steam winches and donkey boiler, h capacity to run all the steam winches at one and the same e, including necessary dunnage, with full complement of ofrs, seamen, engineers and firemen for a vessel of her tonnage to employed in carrying lawful merchandise including petroleum

*Matter enclosed in brackets erased in copy.]

or its products, in cases, and passengers so far as accommodations will allow, but any expense to suit U. S. passenger inspection to be borne by Charterers, between any safe port and/or ports in Canada and/or other British possessions not north of the River St. Lawrence (steamer to leave the St. Lawrence by the 31st of October) [and/or Europe (excluding the White Sea, Black Sea and Baltic in Winter)]* and/or the United States of America and/or West Indies and Gulf of Mexico and/or Caribbean Sea, and/or Central America (Magdalena River excluded) and/or South America, not South of the River Plate, as the Charterers or their Agent shall direct, on the following conditions:

Owners.

Wages, Provisions, Insurance:

1. Shall provide and pay for all provisions, wages, and consular shipping and discharging fees of Captain, Officers, Engineers, Firemen and Crew; shall pay for the insurance of the vessel, also for all engine room and deck stores, and maintain her in a thoroughly efficient state in hull and machinery for and during the services, guaranteeing to maintain the boilers in a condition to bear
61 a working pressure of at least within 20 pounds of what is allowed by Lloyds or Veritas (and the pressure to be carried continuously at sea) during the whole term of this charter, and, to victual and provide for all passengers in the best manner according to their class.

Default:

2. In default of payment of hire, the Owners shall have the faculty of withdrawing the said steamer from the service of the Charterers without prejudice to any claim they, the Owners, may have on the Charterers in pursuance of this charter.

Loss of Time:

3. That in the event of loss of time from deficiency of men or stores, breakdown of machinery or damage preventing the working of the steamer for more than twenty-four hours at sea, the payment of hire shall cease until she be again in an efficient state to resume her service, re-delivered at place of accident or allowance therefor, and should she in consequence put into any port other than that to which she is bound, the port charges and pilotages at such port shall be borne by steamer's Owners. Also if any loss of time from crew or stores not being on board in time, or from repairs to hull and machinery, which are for Owners' account, not being complete after cargo and coals are on board and hour of sailing has been fixed by Charters and notice given to Captain, the time is lost to the Owners' account.

[*Matter enclosed in brackets erased in copy.]

[Painting:

In the event of the steamer being chartered for a period of e months or longer, the hull and funnel to be painted such color harterers direct, the expense of painting to be borne by Owners, ter-s to furnish paint for funnel. Ship's bottom to be kept prop- cleaned and steamer to be docked whenever Captain or Charterers think it necessary, but at least once in every four months. And ment of hire to be suspended until she is again in proper state ervice.]*

Fruit Decks:

That the steamer shall be provided by the Owners with mary "tween" and orlop fruit decks strong enough to sustain eight when filled with bananas, other fruits or general cargo.

Ventilation:

Steamer to work night and day if required by Charterers, and eam winches to be at Charterers' disposal during loading and arging. Owners to provide men to work winches both day and t as required below. Charterers agreeing to pay for all such t work incurred at the current local rate. That the steamer be ded with awnings covering the entire deck during the whole of charter, also with wind sails for each hatch, besides stationary lators placed at convenient places throughout the deck as terers may direct. That the crew is not allowed under any mstances to carry bananas or other merchandise for their own account. Donkey boiler not to be worked when carrying bananas. That should the steamer have an iron deck, the Owners shall agree to have the same sheathed all through 2½-inch plank, or otherwise, Charterers to do it at Owners' nse.

Charterers.

Rate:

Shall pay and provide for all the coal, port charges, pilotages, ies and commissions.

Shall pay for the use of said vessel ($25,000.00) twenty-five sand and 00/100 Dollars in U. S. Currency per calendar month, mencing from the time [the ship is entered at the Custom House placed with clear holds at the Charterers' disposal]* and at and the same rates for any part of a month, hire to continue from me specified for terminating the charter until her delivery to ers (unless lost) — [at a port in the United States.]* New , in like good order and condition, ordinary wear and tear ted.

*[Matter enclosed in brackets erased in copy.]

Minnesota ... St. Paul, Minn.

Payment of said hire to be made in Cash in New York, half monthly in advance from the date of delivery of steamer. [If Charterers keep steamer — months, rate to be — per month for whole period.]*

Disbursements:

9. Cash for ship's necessary disbursements, if desired by Master, but not exceeding $1,500 monthly, to be supplied by Charterers to the Captain at current rate of exchange, subject to commission of 2½ per cent to cover all charges, and Captain's receipt to be
64 taken as part payment of the Charter. That should the steamer be on her voyage towards the port of return delivery at the time a payment of hire comes due, said payment shall be made for such length of time as Owners, Agents, and Charterers, or their agents, may agree upon as the estimated time necessary to complete voyage, and when the steamer is delivered to Owners' Agent, any difference shall be refunded by steamer or paid by Charterers, as the case may require.

Cargo:

10. That the cargo or cargoes shall be laden or discharged with the assistance of the steamer's crew and tackle, in any dock or at any wharf or place that the Charterers or their Agents may direct, provide- the steamer can always safety lie afloat at all times of tide. That the whole reach of the steamer's holds, decks and all places of loading and passenger accommodation of the steamer (not being more than she can reasonably carry and stow) and be at the Charterers' disposal, reserving only proper and sufficient space for ship's officers, crew, tackle, provisions, stores and fuel.

Captain:

11. That the Captain shall prosecute his voyage with the utmost dispatch, and take every advantage of wind by using the sails with a view to economize fuel, and shall render all possible assistance with ship's crew and boats. That the Captain, although appointed by the Owners, shall be under the orders and direction of the Charterers as regards employment, agency or other arrangements; and the Charterers hereby agree to indemnify the Owners from all
65 consequences or liabilities that may arise from the Captain signing bills of lading or otherwise complying with their orders and directions. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, officers or engineers, they shall make such complaint in writing to an agent in New York specially appointed by Owners, who shall have full power to act on their behalf and, if necessary, dismiss any of the officers should they find the complaints made by the Charterers are justified and proven. The Captain will report at Charterers' office at least once a day when in port. The Captain shall be furnished from time to

[*Matter enclosed in brackets erased in copy.]

me with all requisite instructions and sailing directions, and shall eep a full and correct log of voyage or voyages, and shall im- ediately on arrival in port deposit with the Charterers' Manager r Agents a full and complete abstract of steamer's log, together with ich information appertaining to voyage or voyages of the ship as harterers may require. Blank for such report to be furnished by e Charterers. Charterers to furnish Captain and chief officers with dges for their caps, and same to be worn while they are entering leaving port, or while in port on ship's duty.

Super-Cargo:

12. That the Charterers shall have permission to appoint a super- rgo to see that voyages are prosecuted with the utmost dispatch; e crew will follow his directions and instructions in putting on d taking off hatches, or otherwise carrying out his instructions respecting the care of fruit. He shall be furnished, free of charge, with first class fare and accommodations.

Options:

13. That the Charterers shall have the option of continuing this arter for a further period of One (1) round trip on giving notice ereof to the Owners or their Agents [fifteen (15) days previous to e expiration of named term,]* immediately the steamer sails from Johns on first trip.

14. Should the vessel be driven into port or to anchorage by stress weather or from any accident to the cargo, such detention or loss time shall be at the Charterer's expense.

Quarantine:

[15. In case Gulf or Caribbean ports should quarantine steamers om United States ports, or in case the United States should arantine steamers from ports in the Gulf or Caribbean Sea, arterers to have the option of cancelling this Charter Party on ing Owners or Agents fifteen (15) days' notice of such intention days' observation in port in Cuba not to count as quarantine.]* at on account of the perishable nature of the cargoes that this amer is intended to carry, she is not allowed to assist, or tow any sel, when by so doing she is liable to be detained, only in order save human life. (Exception:—In the event of break-down of a sel of the Atlantic Fruit Co., and another vessel employed by same arterers being within signaling distance, masters will confer and as conditions merit.) But should any towage or salvage be earned on other ships, it is to be divided between Owners and Charterers equally, after deducting any expense such as broken tow ropes, bits, or lost time, coal, or any item sacrificed such act.

*Matter enclosed in brackets erased in copy.]

[Hurricane:

16. In the event of hurricane destroying the fruit at any of the sources of supply in the West Indies and/or Mexico Central America and/or South Amreica, Charterers to have the option of cancelling this chater by giving Owners one mnth's notice, or paying one month's hire.]*

Passengers:

17. Charterers shall pay at the rate of $4.00 per day for each first class passenger, and at the rate of 75¢ per day for pilots, tallymen, customs officials, etc.

General Conditions.

Coal:

18. Charterers shall accept and pay for all the coal in steamer's bunkers on delivery, at the current market price per ton of 2,240 lbs.; and steamer to have sufficient coal, in bunkers on delivery, to take her to New York [or Boston, besides two days' extra coal, in bunkers, for coasting purposes;]* and Owners to pay for all coal left in bunkers, on re-delivery of ship, at the current market price, at port where she is re-delivered.

Exceptions:

19. That should vessel be lost, any hire paid in advance
68 and not earned (reckoning from the date of her loss) shall be returned to the Charterers with 6 per cent interest from date of loss. The Act of God, the Kings, Enemies, Fire, Restraints of Princes, Rulers and People, and all other dangers and accidents of the seas, rivers, machinery, boilers and steam navigation throughout this Charter Party always excepted.

[Acclimated Crew:

20. Owners to have on board during whole term of this Charter Party an acclimated crew to meet the requirements of the Louisiana and Alabama State Boards of Health.

Idle Time:

21. On any Charter for a period of twelve (12) months or more, the Charterers to have option of laying steamer off hire — each twelve (12) months of this Charter at Owners' expense. In this case, due notice at least ten (10) days to be given Owners, who will have right to employ her in other trades not in competition with the Atlantic Fruit Co.

Jettison of Fruit:

22. Should the vessel be stranded or exposed to other perils resulting in jettison of bananas, and the vessel be ultimately saved,

[*Matter enclosed in brackets erased in copy.]

e shipowners agree to pay to the Charterers for the bananas jet-
oned 50 cents United States currency per stem of bananas and
ther to assume all liability for the banana cargo's contribution to
neral average and salvage expenses.]*

Arbitration:

23. That should any dispute arise between Owners and Charterers,
matters in dispute shall be referred to three persons in New York,
e to be appointed by each of the parties hereto, and the third by
two so chosen; their decision, or that of any two of them, shall
final and for the purpose of enforcing any award, this agreement
y be made a rule of Court. That the Owners shall have a lien
all cargoes and all sub-freights for any amounts due under this
arter, and the Charterers shall have a lien upon the ship for all
neys paid in advance not earned.

24. That if required by Charterers, time not to commence before
and should steamer not be ready for delivery on or before Decem-
1st, 1919. Charterers or their Agents to have the option of
ncelling this Charter, at any time not later than the day of steam-
readiness.

25. Charterers to have the liberty of subletting the Steamer, if
uired by them.]*

26. That a commission of [five]* $2\frac{1}{2}$ per cent upon the gross amount
his Charter, payable by steamship and owners, is due to Bennett,
nd Bowring & Co., one-half each,
oslef & Co. ∧ upon signing hereof, steamship lost or not. And also
on any continuation or extension of this Charter or sale of
vessel.

27. Penalty for non-performance of this Contract, esti-
mated amount of damages.

Signed with additional clause on back. Atlantic Fruit Company.
gd.) T. O. Muller, Vice-Pres., [by cable authority from —— ——,
ed at ——, Agents.]*

We hereby certify this to be a true copy of the original Charter
rty in our possession. Red Cross Line, Bowring & Co. (Sgd.)
as. W. Bowring. Bennett, Hvoslef & Co., Brokers.

28. No goods or contraband of war to be carried and steamer—
to be required to trade to any blockaded ports or ports where
tilities are in progress. Should the United States of America or
rway become involved in War, or in case there is war between any
the world's Great Powers, during this charter, Charterers and
ners have the option of cancelling charter.

29. Fruit fittings to removed in New York and replaced at
the end of the Charter by the Atlantic Fruit Company in
their time and expense, Charterers agreeing to contribute the
np sum of $1,250.00) twelve hundred and fifty and 00/000
lars, U. S. Currency, towards the expense attached to same.

*Matter enclosed in brackets erased in copy.]

30. This charter-party is subject to the approval of the Chart-Executive of the United States Shipping Board.

31. Where the word "Owners" appears in this charter-party the words "Chartered Owners" to apply.

32. It is understood that steamer is to be allowed by Charterers three (3) days once in every three (3) months to clean boilers. This time to count when steamer has steam off her main boiler but that the Captain can so arrange during this time that she can load or discharge with donkey boiler.)

72 Supreme Court, Appellate Division, First Department.

[Title omitted.]

Stipulation and Order Adding to Papers on Appeal to Appellate Division.

Upon the annexed stipulation signed by the attorneys for the respective parties hereto and upon motion of Hunt, Hill and Betts, attorneys for the Atlantic Fruit Company, Appellant, it is hereby

Ordered, That the appellant have leave to file with and in a form similar to that of the papers on appeal heretofore filed in this Court, a printed copy of the copy of contract filed in the Court and marked Exhibit A, which was omitted by mistake from the papers on appeal as filed and which when printed shall be paged 58-59 et seq., and shall contain three folios to the page.

Dated October, 1921.

So ordered. J. P. C.

It is stipulated by and between the attorneys for the respective parties hereto that the copy of the contract which was attached to the original petition as filed in the Court below, marked Exhibit A, and which was omitted by mistake from the papers on appeal as

73 originally filed in this Court, be separately printed, in a form, however, similar to that in which said papers on appeal filed herein were printed, having pages numbered 58, 59, 60, et seq., and containing three folios to the page, and be attached to said papers on appeal as filed, and that the same may be used upon the argument of said appeal with the same force and effect as if originally included in said papers on appeal. Hunt, Hill & Betts, Attorneys for Appellant. Loomis, Barrett & Jones, Attorneys for Respondent.

Judgment, Appellate Division.

[Filed Dec. 9, 1921.]

[Title omitted.]

74 An appeal having been taken to this Court by the Atlantic Fruit Company from an order of the Supreme Court, New York County, entered on the 11th day of August, 1921, directing the Atlantic Fruit Company to proceed to arbitration under Ch. 275, L.

1920, and said appeal having been argued by Mr. John W. Crandall, of counsel for the appellant, and Mr. Homer L. Loomis, of counsel for the respondent, and due deliberation having been had thereon,

It is hereby unanimously ordered, that the order so appealed from be and the same hereby is affirmed, with $10.00 costs and disbursements.

Enter. J. P. C.

75 **Notice of Appeal to Court of Appeals from Appellate Division, First Department.**

[Title omitted.]

SIRS: Please take notice, That the Atlantic Fruit Company hereby appeals to the Court of Appeals from the order entered on the 9th day of December, 1921, affirming an order of a Special Term, Part I of the New York Supreme Court, New York County, entered in the office of the Clerk of the County of New York on the 11th day of August, 1921, whereby the Atlantic Fruit Company was ordered and directed to proceed to arbitration and to appoint its arbitrator pursuant to Chapter 275 of the Laws of 1920, and from each and every part of said order. Yours, etc., Hunt, Hill & Betts, Attorneys for Appellant, Atlantic Fruit Company, 120 Broadway, Borough of Manhattan, New York City. To Messrs. Loomis, Barrett & Jones, Attorneys for Petitioner-Respondent, No. 52 Broadway, Borough of Manhattan, New York City. The County Clerk for the County of New York, County of New York.

76 **Certificate of Clerk.**

STATE OF NEW YORK,
County of New York, ss:

I, James A. Donegan, Clerk of the said County and Clerk of the Supreme Court of said State for said County, do certify that I have compared the preceding with the original Certificate of Remittitur and ret. on file in my office and that the same is a correct transcript therefrom, and of the whole of such original.

Indorsed Filed, Sept. 10, 1921.

In Witness Whereof, I have hereunto subscribed my name and fixed my official seal this 20th day of February, 1922. James A. Donegan, Clerk. [New York Seal.]

Affidavit of No Opinion in Appellate Division.

[Title omitted.]

77 STATE OF NEW YORK,
County of Albany, ss.

Reginald B. Williams, being duly sworn, deposes and says he is an attorney at law and associated with the firm of Loomis, Barrett &

Jones, Attorneys for the Petitioner-Respondent herein, and in charge of the above entitled matter, and that no opinion was handed down by the Appellate Division, First Department, on the affirmance of the order herein. Reginald B. Williams.

Sworn to before me, this 25th day of Feb., 1922. Wm. J. Le Compte, Comm. of Deeds, City of Albany.

78 **Remittitur from Court of Appeals.**

[Filed June 1, 1922.]

[Title omitted.]

Witness the Hon. Frank H. Hiscock, Chief Judge, presiding. R. M. Barber, Clerk. Remittitur June 1, 1922.

In the Matter of the Petition of RED CROSS LINE for an Order Directing Atlantic Fruit Company to Proceed to Arbitration.

Be it remembered, That on the 23rd day of February in the year of our Lord one thousand nine hundred and twenty two Atlantic Fruit Company, the appellant in this cause came here into the Court of Appeals, by Hunt, Hill & Betts, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the
79 First Judicial Department. And Red Cross Line the respondent in said cause, afterward appeared in said Court of Appeals by Loomis, Barret & Jones, its attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. John W. Crandall of counsel for the appellant, and by Mr. Homer L. Loomis of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the orders herein be and the same hereby are reversed and proceeding dismissed, with costs in all courts.

And it was also further ordered that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore it is considered that the said orders be reversed etc., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law and which record now remains in the said Supreme Court before the Justices thereof, etc. R. M. Barber, Clerk of the Court of Appeals of the State of New York.

80 Court of Appeals, Clerk's Office.

Albany, June 1, 1922.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals with the papers originally filed therein, attached thereto. R. M. Barber, Clerk. [Seal State of New York Court of Appeals.]

81 & 82 **Order for Judgment on Remittitur.**

[Filed July 5, 1922.]

At a Special Term, Part II, of the Supreme Court of the State of New York Held in and for the County of New York at the County Court House, Borough of Manhattan, New York, on the 5th Day of July, 1922.

Present: Hon. Philip J. McCook, Justice.

[Title omitted.]

Upon the remittitur in the above entitled action and on motion of Hunt, Hill & Betts, attorneys for Atlantic Fruit Company, it is

Ordered that the judgment of the Court of Appeals be the judgment of this Court and the clerk is hereby directed to enter judgment in favor of the Atlantic Fruit Company and against Red Cross Line for taxable costs and disbursements.

Enter: P. J. McC., J. S. C.

[Endorsement omitted.]

83 **Judgment for Costs on Remittitur.**

[Filed July 26, 1922.]

[Title omitted.]

An order of the Special Term, Part I, of the Supreme Court, New York County, having been entered herein on the 11th day of August, 1921, compelling the Atlantic Fruit Company to proceed to arbitration and to appoint its arbitrator on or before the 20th day of August, 1921, with $10.00 costs, and the Atlantic Fruit Company having appealed from said order to the Supreme Court, Appellate Division, First Department, and said Appellate Division having by an order dated and entered the 9th day of December, 1921, affirmed said order with $10.00 costs and disbursements, and the Atlantic Fruit Company having appealed from said orders to the Court of Appeals, and the said Court of Appeals having sent hither its remittitur filed herein the 1st day of June, 1922, by which it appears that the said Court of Appeals has reversed the said orders of the

Special Term and of the Appellate Division and dismissed the pr
ceeding with costs in all Courts, and has remitted the jud
84 ment of said Court of Appeals to this Court to be proceede
upon and enforced according to law, and this Court havin
by an order duly entered herein on the 6th day of July, 1922, o
dered that said judgment be made the judgment of this Court, an
the appellant, Atlantic Fruit Company's costs having been dul
taxed in the sum of —.

Now, on motion of Hunt, Hill & Betts, attorneys for appellan
Atlantic Fruit Company, it is

Ordered, that the order of the Appellate Division of the Suprem
Court for the First Judicial Department, entered in the Office of th
Clerk of the County of New York on the 9th day of December, 192
and the order of the Special Term, Part I, of the Supreme Cour
New York County, entered in the Office of the Clerk of the Count
of New York on the 11th day of August, 1921, be and the sam
hereby are reversed with costs; and it is

Further ordered, that the appellant, Atlantic Fruit Company re
cover of the respondent, Red Cross Line, the sum of $448.47 cost
as taxed, and have execution therefor.

Dated, New York, July 26, 1922. James A. Donegan, Clerk.

85 [Endorsement omitted.]

86 **Clerk's Certificate.**

STATE OF NEW YORK,
County of New York, ss:

I, James A. Donegan, Clerk of the said County and Clerk of th
Supreme Court of said State for said County, Do Certify, That I hav
compared the preceding with the original Remittitur from Court o
Appeals in In the Matter of the Petition of Red Cross Line for a
order directing Atlantic Fruit Company to proceed to Arbitration
on file in my office, and that the same is a correct transcript there
from, and of the whole of such original.

In witness whereof, I have hereunto subscribed my name and af
fixed my official seal, this 28 day of August, 1922. James A. Done
gan, Clerk. [Seal New York.]

O. K. G. E. P.

87 & 88 Pages 86-88, Folios 258-264, in Copy of Record.

STATE OF NEW YORK, *ss:*

Court of Appeals, State Reporter's Office.

I, J. Newton Fiero, Reporter of the Court of Appeals of the Stat
of New York, do hereby certify that I have compared the annexed
copy of opinion in the case of In the Matter of the Petition of the
Red Cross Line, Respondent, for an Order Directing the Atlantic
Fruit Co. etc. decided by the Court of Appeals on the 31st day of

May 1922, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

In witness whereof, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this 11th day of August 1922. J. Newton Fiero, As Reporter of the Court of Appeals of the State of New York. Attest: R. M. Barber, Clerk of the Court of Appeals. [Seal of Court of Appeals, State of New York.]

STATE OF NEW YORK:

Court of Appeals.

I, Frank H. Hiscock, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that Richard M. Barber is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that J. Newton Fiero is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of In the Matter of the Petition of the Red Cross Line, Respondent, for an Order Directing the Atlantic Fruit Co. etc. decided by the said Court of Appeals on the 31st day of May 1922, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of Richard M. Barber, as clerk of said court, appended thereto is the true and genuine signature of said Richard M. Barber, and the signature of J. Newton Fiero, as reporter of said court, appended thereto is the true and genuine signature of said J. Newton Fiero.

In witness whereof, I have hereunto subscribed my official signature at the Chambers of said court at the Court of Appeals Hall, in the City of Albany and State of New York, on the 11th day of August in the year one thousand nine hundred and twenty-two. Frank H. Hiscock, As Chief Judge of the Court of Appeals of the State of New York.

89 **Opinion of Court of Appeals, Hogan, J.**

(Filed May 31, 1922.)

In the Matter of the Petition of THE RED CROSS LINE, Respondent, for an Order Directing the Atlantic Fruit Company, Appellant, to Proceed to Arbitration.

(Decided May 31, 1922.)

Appeal from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered December, 1921, which unanimously affirmed an order of Special Term directing the appellant herein to proceed to arbitration and to appoint its arbitrator pursuant to the provisions of chapter 275, Laws of 1920.

November 28th, 1919, the petitioner, Red Cross Line, respondent, and the appellant, Atlantic Fruit Company, entered into a written agreement of charter party wherein appellant was described as "chartered owners" of the steamship Runa and referred to as "owners," and the respondent "Red Cross Line" was designated as "charterers."

By the terms of the charter party the owners let and the charterers hired the steamship Runa from the time of delivery at Philadelphia, Pa., with sufficient bunkers to take the steamer to New York, for one round trip between New York and any safe port or ports in Canada or other British possessions not north of the St. Lawrence River.

The owners covenanted to provide and pay for all provisions, wages and consular shipping and discharging fees of captain, officers, firemen and crew, pay for the insurance of the vessel, also for all engine room and deck stores and maintain the vessel in a thoroughly efficient state. The charter party provided that in the event of loss of time from deficiency of men or stores, breakdown
90 of machinery or damages preventing the working of the steamer for more than twenty-four hours at sea the payment of hire should cease until service was resumed, and should the vessel, in consequence, put into any port other than that to which it was bound, the port charges, etc., should be borne by the "owners"; further, that if any loss of time occurred from crew or stores not being on board in time, repairs not being complete after cargo and coals on board and hour of sailing had been fixed by "charterers" and notice given to captain, the time was lost to the "owner's" account.

The "charterers" covenanted to pay and provide for all the coal, port charges, pilotage agencies and commissions and for the use of the vessel twenty-five thousand dollars per calendar month and at the same rates for any part of a month until delivery of the vessel to owner (unless lost), payment to be made in cash half monthly in advance from the date of delivery of steamer, also for all the coal in steamer's bunkers on delivery, the owners to pay for all

l left in bunkers on redelivery of ship at port where redelivered. default of payment of hire the "owners" had the right to with- w the steamer from the service of "charterers" without preju- e to any other claims under the charter.

Further provisions of the charter party were: "The captain shall secute his voyage with the utmost disptach."

"That should any disputes arise between owners and charterers matters in dispute shall be referred to three persons in New rk, one to be appointed by each of the parties hereto and the third by the two so chosen; their decision, or that of any two of them, shall be final and for the purpose of enforcing any award, this agreement may be made a rule of Court."

A dispute and controversy arose between the parties. On April , 1920, the "charterers" demanded that the "owners" join with "charterers" in an arbitration of said dispute as provided by charter party. The "owners" refused to accede to the demand d thereupon the present proceeding was instituted under chapter 5, Laws of 1920, for an order directing the "owners" to appoint arbitrator and proceed to arbitration as provided for in the char- party contract.

The petition presented to the Court set out in full the charter party ntract and in substance as to dispute and controversy between the rties, the following:

(*a*) That the steamer cleared from the port of New York for the rt of St. Johns, normally an eight-day run from New York, on De- mber 6th, 1919, and was ready to proceed in the evening of that y and the master was ordered so to do by the "charterers," but re ed to proceed until the following day, December 7th, 1919, a dless delay of twelve hours, and the master did not, as required the charter party, "prosecute said voyage with the utmost dis- ch."

(*b*) That when within approximately one hundred miles of St. hns, Newfoundland, the port of destination, the master turned the mer about and proceeded to the Azores, distant from St. Johns out thirteen hundred miles, where the Runa was kept by the master twenty-one days until January 5th, 1920, and finally arrived at Johns on January 14th, 1920, and that thirty-nine days were consumed on the voyage from New York to Newfoundland, instead of eight days, the normal running time.

(*c*) That the steamer consumed an excess quantity of coal ceeding two hundred ninety-eight tons over the amount reasonably uired.

(*d*) That petitioners in ignorance of the true state of facts until er the return of the steamer and in view of the right of the Fruit mpany under the charter contract to withdraw the steamer from service of petitioner unless the hire of the same was paid in ad- nce, paid to the "owners" under protest, charter hire, cost of fuel d other disbursements aggregating $35,256.96 which the Fruit mpany after demand has refused to repay and which items and r-payment constitute a dispute and controversy between the rties.

The answer to the petition filed by respondent denied:

(*a*) That the master did not prosecute the voyage with the utmost dispatch, viz., in leaving New York on the evening of December 6th, and affirmatively alleged that the pilot appointed by the pilotage authorities in the port of New York pursuant to law refused to take the steamship Runa out to sea on the evening of December 6th, 1919, on the ground that it was not safe to do so.

(*b*) Denied that the steamer as alleged was turned about and proceeded to the Azores, kept there by the master for a period of twenty-one days, finally arriving at St. Johns, January 14th, 1920, and that an excess quantity of coal was taken aboard the steamer.

93 (*c*) Denied knowledge or information sufficient to form a belief that the "charterers" were ignorant of the true state of facts alleged until after the re-delivery of the steamer and that in order to protect its rights paid to the owner the charter hire, cost of fuel and other disbursements.

(*d*) Denied that any amount is due the respondent.

(*e*) Admits that a dispute and controversy has arisen and exists between the parties and its refusal to arbitrate the same.

As an affirmative defense and answer it was alleged:

That the dispute or controversy between the parties set forth in the petition and answer being one arising out of a charter party is a maritime dispute and is a cause of "admiralty and maritime jurisdiction" over which causes the United States courts are clothed with exclusive jurisdiction pursuant to the Constitution of the United States, and that the statute of this state, chapter 270, Laws of 1920, provides an additional remedy unknown to the common law for the settlement of disputes by compelling parties to arbitrate them, if they have agreed to do so; that such a remedy is not applicable to disputes within the admiralty and maritime jurisdiction of the United States courts.

That the steamship Runa was not owned by appellant but chartered by it under a charter party like unto the one in the present case from Hage Waage, a Norwegian, and under the charter the entire navigation of the steamship was under the control of the master, officers and crew appointed and employed by Waage, the true

94 owner, and not by appellant, and any fault or neglect was the omission or fault of the owner Waage and not of appellant; that under the law and practice of the United States courts in admiralty a remedy exists in appellant in a suit in admiralty to bring in a party ultimately liable and in case such party is a non-resident attachment may issue aga-nst his property; therefore, the United States court where all parties interested may be heard is the proper tribunal for adjustment of the rights of all parties in one action.

John W. Crandall and E. F. Rapallo for appellant.

Homer L. Loomis, and Reginald B. Williams for respondent.

Hogan, *J.*: Section 2, article 3 of the Federal Constitution provides: "The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction."

The Judicial Code confers upon the District Courts original jurisdiction of all civil causes of admiralty and maritime jurisdiction

ing to suitors in all cases the right of common-law remedy where common law is competent to give it. Section 256 of the Judicial le provides: "The jurisdiction vested in the courts of the United tes * * * shall be exclusive of the courts of the several tes."

The appellant having invoked the foregoing provisions of the leral Constitution in opposition to the granting of an order of itration and thereby made the provisions of the Constitution ted, as amplified by the Judicial Code, the subject of construction, appeal is properly before this court. (Code Civ. Pro. § 191, d. 1.)

By reason of an alleged breach of contract of a charter party contract by the owner of a steamship, and a clause contained in said contract that any dispute or controversy between the parties thereto shall be determined by arbitration, the charers have thus far sustained an order of the Supreme Court directthe owner to proceed to arbitration as provided in the Arbitration v. The fundamental question to be determined upon this apl is whether or not the controversy between the parties is one of niralty or of state jurisdiction. If the dispute be one of jurisdicn by the admiralty court, the state court was powerless to order the ner to proceed to arbitration notwithstanding the clause of the conct providing for the settlement of disputes arising thereunder.

n a consideration of the question as to the jurisdiction of the Sume Court we must examine the petition and answer thereto used n the application for the order directing arbitration and deterne therefrom the subject-matter of the charter party contract and nature of the controversy to be submitted to arbitration. A repeon of the language of the contract and of the petition and answer nnecessary. A synopsis of the provisions of the instrument is forth in the statement preceding our conclusions and discloses t the subject-matter of the contract is the use of a steamship and nsportation of a cargo from the port of New York to a port of rfoundland, consequently the contract pertains to navigation. the allegations of the petition and of the answer is presented the stions: Is the owner of a steamship under charter liable to charrs for delay in sailing from a port when a duly licensed pilot, ler pilotage laws, believes it unsafe to take the vessel to sea? Is the master of a steamship justified in turning the steamship about and proceeding temporarily to a port other than the port of destination? Necessarily an answer to the questions ependent upon the facts and circumstances surrounding the rel of the pilot to immediately take the vessel to sea, the act of master of the vessel in turning the vessel from its course and ceeding to the Azores and the reasonableness or necessity of the ged delay at the latter port. We may assume that the condition the weather, the seaworthiness of the steamship, the existing ation at the time of the deviation of the vessel from its course the safety of the steamship and cargo would have an important ring upon the questions propounded; therefore, the subject of controversy existing between the parties is clearly one pertain-

ing to navigation; consequently, the question of liability or non-liability of the owner to the charterer is within the exclusive jurisdiction of the courts of admiralty. We cannot attribute to the legislature an intention to limit or usurp the jurisdiction of the Federal courts. The section of the Arbitration Law (Section 3) under which the order herein was granted has been construed by us as a statutory legal remedy of a character unknown to the common law (Matter of Berkovitz vs. Arbib & Houlberg, Inc., 230 N. Y., 261); it therefore, is not embraced within the exceptions contained in the Judicial Code.

Counsel for the charterers urges that a remedy provided in the state court that makes available a remedy for the settlement of a maritime controversy through the specific performance of an agreement for that remedy is not an infringement of the jurisdiction of the Admiralty courts; that the charterers are not seeking a judgment for overpaid charter hire, etc., but an order decreeing that the
97 arbitration proceed in the manner provided by the contract.

Even if we assume that the proceeding is practically one to enforce specific performance of the arbitration clause of the contract, an order granting such relief presupposes the existence of a controversy the subject-matter of which is within the jurisdiction of the court granting the order. It would be idle ceremony for the courts to grant an order requiring specific performance of an agreement to arbitrate a dispute, where upon an examination of the papers presented as the basis for such an order it is apparent that the subject-matter of the controversy which the "charterers" desire submitted to arbitration clearly arose under maritime clauses in a charter party over which the arbitrators could not assume jurisdiction even if arbitration was ordered.

In the present case, the agreement to arbitrate which is sought to be enforced is part of a maritime contract. It is contained in a charter party and such clause is void in the federal forum. (United States Asphalt Refining Co. vs. Trinidad Lake Petroleum Co., 222 Fed. Rep., 1006, and cases cited therein.)

To sustain the arbitration clause and enforce the same in the state courts would deny to the federal court the exclusive jurisdiction with which Congress has clothed it, and likewise destroy a rule of uniformity. (So. Pac. Co. vs. Jensen, 244 U. S., 205; Knickerbocker Ice Co. vs. Stewart, 253 U. S., 149.)

The order appealed from should be reversed and the proceedings dismissed, with costs in all courts.

Hiscock, Ch. J., Cardozo, Pound, McLaughlin, Crane and Andrews, JJ., concur.

Order reversed, etc.

98 [Title omitted.]

The writ of certiorari in the above entitled case having been granted to the above entitled petitioner to review the judgment and decision of the Supreme Court for New York County, New York State, in the above entitled cause in which Red Cross Line was petitioner, and Atlantic Fruit Company was respondent:

Now it is therefore stipulated and agreed between counsel for the above named petitioner and counsel for the above named respondent that the Transcript of Record of the said Supreme Court for New York County, New York State, in the said cause now on file in the Supreme Court of the United States, be taken as a return to the said writ and that the Clerk of the Supreme Court for New York County, New York State, forward a certified copy of this stipulation to the Clerk of the Supreme Court of the United States forthwith, as his return to the said writ of certiorari.

Dated New York City, December 9th, 1922. Homer L. Loomis, Counsel for above Petitioner. John W. Crandall, Counsel for above Respondent.

STATE OF NEW YORK,
County of New York, ss:

Supreme Court for New York County, State of New York.

December 21", 1922.

In obedience to the writ of certiorari hereto attached and returned herewith, I hereby certify that the foregoing contains a true copy of the stipulation of counsel in the case therein stated as appears from the original now on file in this office.

Witness my signature and the seal of the said Court hereto affixed, the day and year above written. James A. Donegan, Clerk of the Supreme Court for New York County, New York State. [Seal New York.]

99 [Endorsement omitted.]

100 **Writ of Certiorari.**

[Filed Dec. 26, 1922.]

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New York, New York County, Greeting:

Being informed that there is now pending before you a suit entitled In the matter of the Petition of Red Cross Line for an order directing Atlantic Fruit Company to proceed to arbitration, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States,
101 do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings

in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the second day of December, in the year of our Lord one thousand nine hundred and twenty-two. Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

102 [Endorsement omitted.]

103 & 104 [Endorsement omitted.]

FILED
AUG 31 1922
WM. R. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1922.

No. 588 112

RED CROSS LINE,

Petitioner,

against

ATLANTIC FRUIT COMPANY,

Respondent.

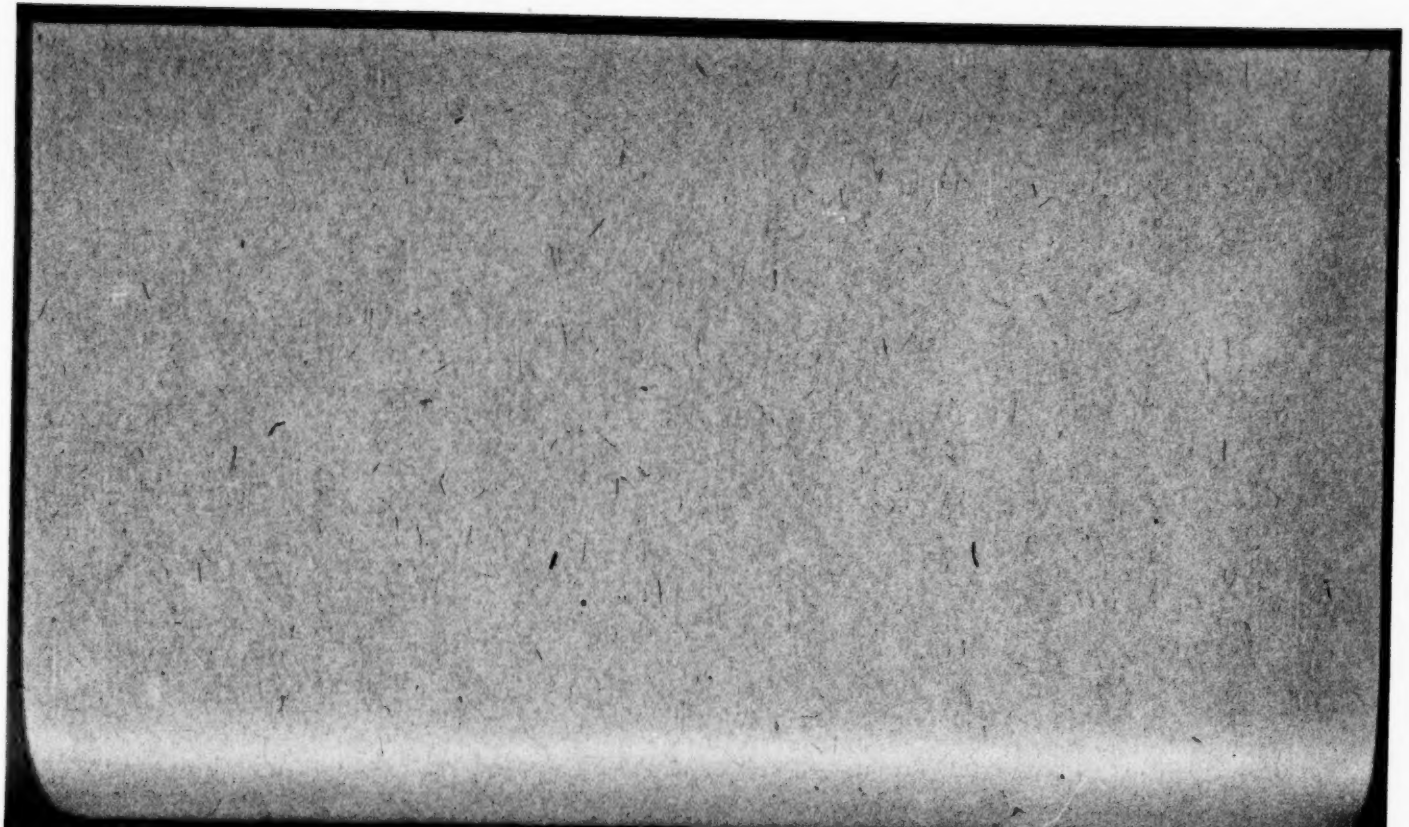
In the Matter

of

The petition of RED CROSS LINE for an order directing ATLANTIC FRUIT COMPANY to proceed to arbitration.

NOTICE OF MOTION, PETITION AND BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR NEW YORK COUNTY, NEW YORK STATE.

HOMER L. LOOMIS,
Counsel for Petitioner.



Order of Appearance.

SUPREME COURT,
OF THE UNITED STATES,

October Term, 1922.

No.

RED CROSS LINE,
Petitioner,
against
ATLANTIC FRUIT COMPANY,
Respondent.

In the Matter
of
The petition of Red Cross Line for an order directing Atlantic Fruit Company to proceed to arbitration.

Petition for Writ of Certiorari to the Supreme Court for New York County, New York State.

The Clerk will enter my appearance as counsel for the Petitioner.

HOMER L. LOOMIS,
52 Broadway,
Borough of Manhattan,
New York City.

Notice of Petition.

SUPREME COURT,
OF THE UNITED STATES,
October Term, 1922.
No.

RED CROSS LINE,
Petitioner,
against
ATLANTIC FRUIT COMPANY,
Respondent.

In the Matter
of
The petition of Red Cross Line for an order directing Atlantic Fruit Company to proceed to arbitration.

Please take notice that the annexed petition for a Writ of Certiorari to the Supreme Court for New York County, New York State, will be submitted to the Supreme Court of the United States at the opening of Court on October 2nd, 1922, or as soon thereafter as counsel may be heard.

Dated, New York, August , 1922

HOMER L. LOOMIS,
Counsel for Petitioner,
52 Broadway,
New York City.

To:
Messrs: HUNT, HILL & BETTS,
Attorneys for Respondent,
120 Broadway, New York City.

The Petition.

TO THE

SUPREME COURT,

OF THE UNITED STATES,

RED CROSS LINE,
Petitioner,

against

ATLANTIC FRUIT COMPANY,
Respondent.

In the Matter
of
The petition of Red Cross Line for an order directing the Atlantic Fruit Company to proceed to arbitration.

Your petitioner respectfully shows:

1. In April, 1920, the Legislature of the State of New York by Chapter 275 of the Laws of 1920, enacted a law hereinafter referred to as the Arbitration Statute, in Section 2 whereof it declared that agreements to arbitrate were valid and enforceable and in Section 3 whereof it provided a method whereby to facilitate the specific performance of such agreements. For the convenience of the Court a copy of said law together with the amendment of 1921 is attached hereto as an appendix.

2. On April 12, 1921, Red Cross Line, a British Corporation, hereinafter called the petitioner, pursuant to said Statute, filed a petition in the Supreme Court, New York County, praying for an order directing Atlantic Fruit Company, a Delaware corporation, hereinafter called the respondent, to join with the petitioner in an arbitration in accordance with an arbitration agreement contained in a charter-party to which they were parties and under which a controversy had arisen.

3. Briefly stated the petition set forth:

That on Nov. 28, 1919 respondent had chartered to petitioner the steamship Runa for one round trip between New York and a safe port in British North America at a hire of $25,000 00 per month; that among other provisions in said contract it was provided that the captain should prosecute the voyage with the utmost dispatch; that in the event of damages preventing the working of the steamer for 24 hours at sea payment of hire should cease until the vessel was again in an efficient condition to resume her journey and that any loss of time occasioned by repairs to hulls or machinery or by deficiency of crew or stores, should be for respondent's account; that it was further provided by Article 23 of said contract as follows:

> "23. That should any dispute arise between owners and charterers the matter in dispute shall be referred to three persons in New York, one to be appointed by each of the parties hereto and the third by the two so chosen; their decision or that of

any two of them shall be final and for the purpose of enforcing any award this agreement shall be made a rule of the court."

That thereafter the said steamship entered upon the performance of said contract and on December 6th cleared the port of New York bound for St. Johns, Newfoundland; that the Captain did not prosecute the voyage with the utmost dispatch; that when within 100 miles of his destination, the master turned the steamer around and went into the Azores where she was laid up for 21 days, thereby consuming 39 days in the trip to St. Johns instead of the 8 days ordinarily required; that petitioner, being in ignorance of the true facts until the return of the steamer to New York and in order to prevent her premature withdrawal for non-payment of hire and otherwise to protect its rights, paid to respondent under protest hire and disbursements at the times and in the amount stipulated in the contract; that by reason of these facts petitioner had overpaid to respondent hire and disbursements in the sum of 35,256.96, of which sum petitioner demanded the repayment; that respondent had refused and disputed its liability to repay the same; that a dispute having thus arisen petitioner pursuant to said Article 23 called upon respondent to arbitrate the same; and that respondent had refused and still refuses to arbitrate. The petitioner concluded with a prayer for the relief hereinbefore described.

4. After the petitioner had served and filed the petition in the State Court respondent re-

moved the same to the United States District Court for the Southern District of New York on the ground that it was a civil suit between an alien and a non-resident wherein the amount in controversy was over $3,000 and on the further ground that it was a suit arising under the constitution or laws of the United States. Petitioner appearing specially in the District Court moved to remand the suit to the State Court and respondent made a counter motion to dismiss the same for lack of jurisdiction. The District Court denied the motion to dismiss and remanded the suit on the ground that it was not a suit in which the jurisdictional amount of $3,000.00, as required by the removal statute, was involved In Re Red Cross Line, 277 Fed. Rep. 853.

5. The respondent thereafter filed an answer to the petition in the State Court in which among other things, it admitted the agreement to arbitrate and that it had refused so to do. Respondent alleged, however, as a complete defense, that the dispute set forth in the petition, being one arising out of a charter-party, was a maritime dispute and a cause over which the Admiralty Court has exclusive jurisdiction, except in so far as a common law remedy is saved; that the State Statute "provided (to quote respondent's language) an additional remedy unknown to the common law for the settlement or adjustment of disputes by compelling parties to arbitrate them if they have agreed to do so"; and that, in so far as the statute was intended to apply to agreements to arbitrate disputes arising over matters within the maritime juris-

diction, said statute was contrary to Article III, Section 2, of the Federal Constitution and Sections 24 and 256 of the Judicial Code conferring jurisdiction over such disputes on the Admiralty Court

6. At the hearing of the petition at a Special Term of the Supreme Court of the State of New York and thereafter on the hearing of the appeals hereinafter referred to, petitioner contended (a) that there was no question of maritime jurisdiction involved, the statute providing in express terms and the petitioner seeking only a remedy to enforce not the rights in dispute but the specific agreement to arbitrate, which agreement in itself was a strictly non-maritime agreement; (b) that even if, by reason of the agreement's being contained in a charter-party, it could be considered maritime, the remedy to enforce it was the common-law remedy of specific performance; and (c) that even if the statute could be said to furnish a remedy for the adjustment of controversies it was not such a remedy as infringed the admiralty jurisdiction.

7. Thereafter Mr. Justice Burr, handing down a memorandum opinion, granted the petition and entered the order heretofore referred to directing respondent to proceed to arbitration in accordance with its contract. From said order an appeal was thereafter carried to the Appellate Division of the Supreme Court, where without opinion the order was unanimously affirmed.

8. Thereafter an appeal carried to the Court of Appeals of the State of New York, which is the

highest court of the State, the order of the Appellate Division was unanimously reversed on May 31, 1922, and the proceedings were ordered to be dismissed. The Court of Appeals in the opinion setting forth the grounds of its decision reasoned in brief that, the charter-party agreement, of which the arbitration agreement was a part, being one for the use of a steamship and the transportation of cargo from the port of New York to a foreign port and the controversy between the parties being one pertaining to navigation, "the question of liability or non-liability of the owner to the charter is within the exclusive jurisdiction of the courts of admiralty;" that to sustain the arbitration agreement and enforce the same in the State Court would deny to the Federal Courts the exclusive jurisdiction with which Congress had clothed them and destroy the uniformity essential to the Admiralty Jurisdiction; and that if the arbitration agreement should be specifically enforced, its enforcement would be an idle proceeding because the arbitrators could not assume jurisdiction over a maritime dispute.

9. The remittitur from the Court of Appeals was returned to the Supreme Court of the State of New York, New York County, on July 5 1922 and a judgment on said remittitur making the judgment of the Court of Appeals the judgment of the said Supreme Court was entered on July 5, 1922.

10. The question involved in this case is the following: Is a State Statute that provides for use in the courts of that State a method

specifically to enforce arbitration agreements unconstitutional as an infringement of the maritime jurisdiction when applied to an arbitration agreement contained in a charter-party, the controversies to be arbitrated arising subsequent to the making of the agreement and being such as are cognizable in the Admiralty Court?

11. Your petitioner avers that the present case is one in which it is proper for this Court to grant a writ of certiorari, because: (1) There has been a final judgment of the Court of Appeals of the State of New York which is the highest court in the State in which a decision can be had; (2) The case is one in which the validity of the application of a State Statute was drawn in question on the ground that it was repugnant to the constitution and laws of the United States, and the decision was against the validity of the application; (3) It is a case within Section 237 of the Judicial Code allowing said writ in a "cause where * * * is drawn in question the validity of a statute of, or an authority exercised under any state on the ground of their being repugnant to the constitution or laws of the United States and the decision is against their validity."

12. Your petitioner further avers that the present case is one in which it is proper to review the decision of the Court of Appeals for the following reasons, among others:

(a) The Court of Appeals based its decision on the ground that to enforce the arbitration agreement in the State courts "would deny to

the federal courts the exclusive jurisdiction with which Congress had clothed it" (them).

This conclusion is unwarranted, whether the State remedy is considered (1) a remedy to enforce the specific agreement to arbitrate or (2) a remedy to enforce the alleged rights in the controversy.

If the first of these two alternatives be true the State remedy enforced an agreement that is collateral to and independent of the other obligations of the charter-party and is itself non-maritime in nature; while even were it maritime its specific performance pursuant to the decree of an equity court would not infringe the Admiralty jurisdiction, which lacks the power to compel such performance.

On the other hand, to consider the second of the alternatives above noted, if the remedy, although in terms one to enforce the agreement to arbitrate is as respondent contended one used to enforce the alleged rights in the controversy it is not a remedy that infringes the exclusive jurisdiction of the Admiralty court because the suit is one *in personam* in which the court by a mere auxiliary process authorized by a State Statute enforces an agreement that the merits of the controversy shall be conditioned upon the report of arbitrators as upon any other extrinsic fact which agreement might prescribe. A judgment *in personam* is entered upon this report and the proceeding is therefore "essentially a proceeding according to the course of the common law" and within the saving clause of the judicial code.

(b) No inhibition exists in the provisions of the Constitution or the judicial code, conferring jurisdiction on the admiralty court against parties' agreeing to submit or submitting maritime controversies to arbitrators nor is there any authority for the ruling that arbitrators in such an event would not have jurisdiction.

The holding of the Court of Appeals to the effect that to enforce in the state court the parties' own agreement would deny to the federal court the exclusive jurisdiction of maritime causes, because such enforcement would make available a remedy for the adjustment of maritime disputes without the admiralty court is not only an unprecedented judicial extension of the jurisdictional provisions, but also, it is submitted, a decision that should not be upheld except upon strict principle and obvious necessity.

13. Your petitioner further avers that it is of great commercial importance that a decision of the question here presented be made by this Court.

Arbitration clauses are common in maritime as well as non-maritime contracts. The leading commercial State in the Union now has a statute providing in effect for their specific enforcement and in view of the favorable attitude assumed toward such legislation in general by representative public bodies, such as Bar Associations and Chambers of Commerce, national, state and local, it is likely that other states will follow New York's lead.

If the New York Court of Appeals is correct in its decision, it would seem that the benefits of such legislation are to be denied to a large and important part of the public; a result that, in view of the grounds of that Court's decision, it may be not even Congress could correct unless and until the Constitution of the United States was amended.

14. Because of the foregoing reasons your petitioner prays that a writ of certiorari may issue in this case to the Supreme Court, New York County, in the State of New York, to bring up this case to this Court for such proceedings therein as may be just.

Respectfully submitted,

RED CROSS LINE
By Bowring & Company,
Agent.
By Cyril Bowring
Director

HOMER L. LOOMIS,
Counsel for Petitioner.

State of New York, }
County of New York, } ss.:

Cyril Bowring being duly sworn, deposes and says that he is a director of Bowring & Company, the agent in the United States for Red Cross Line, the petitioner herein; that he has read the foregoing petition,

and that the same is true to his own knowledge, except as to matters therein alleged to be stated upon information and belief, and that as to those matters he believes it to be true. That the reason this verification is made by Bowring & Company by deponent is that Red Cross Line is a British corporation, none of whose officers are within the jurisdiction, and Bowring & Company is its agent, and has authority and deponent is an officer of said agent.

Sworn to before me this
24 day of August 1922.
Vincent O'Dwyer
Notary Public
New York County Clerk's No 301

Cyril Bowring

Seal

I HEREBY CERTIFY that I have examined the foregoing petition and that in my opinion the petition is well founded, and the case is one in which the prayer of the petitioner should be granted by this court.

HOMER L. LOOMIS,
Counsel for Petitioner.

SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM 1922.

RED CROSS LINE,

Petitioner,

versus

ATLANTIC FRUIT COMPANY,

Respondent.

In the Matter

of

The petition of RED CROSS LINE for an order directing ATLANTIC FRUIT COMPANY to proceed to arbitration.

BRIEF IN BEHALF OF PETITIONER IN SUPPORT OF APPLICATION FOR WRIT OF CERTIORARI.

HOMER L. LOOMIS,
Counsel for Petitioner.

HOMER L. LOOMIS,
REGINALD B. WILLIAMS,
Of Counsel.

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PETITIONER'S BRIEF.

SUPREME COURT,
OF THE UNITED STATES.

RED CROSS LINE,
Petitioner,
against
ATLANTIC FRUIT COMPANY,
Respondent.

In the Matter
of
The petition of Red Cross Line for an order directing Atlantic Fruit Company to proceed to arbitration.

POINT I.

The Court of Appeals of the State of New York erred in holding that to enforce in the State Courts the parties' agreement to arbitrate contained in a charter-party would deny to the Federal Courts the exclusive jurisdiction with which Congress had clothed them.

Petitioner brought its petition for the specific performance of the arbitration agreement in the equity part of the Supreme Court, New York County, invoking for that purpose the quick

and efficient procedure provided in the Arbitration Statute. Section 3 of the Statute* provides in terms a "remedy" for the "party aggrieved" to enforce "a contract or submission providing for arbitration on the "failure, neglect or refusal of another to perform".

In so far as there has been any judicial interpretation of Section 3 of said statute, it is consonant with the *expressed* intent of the act. It has been judicially declared not only that the said section *"prescribes the procedure for the enforcement of the contract* (*Berkowitz* v. *Arbib & Houlberg*, 230 N. Y. 261-269) but also that *the "act is intended to compel specific performance of contracts for arbitration"* and in the absence of such a contract it provides no remedy whatever (*Matter of Division*, 132 etc, 196 App Div. 206-212).

The courts have never denied that the agreement to arbitrate created a right. In *Berkowitz* v. *Arbib & Houlberg*, (*supra*), the contention was made that prior to the enactment of the Statute such an agreement did not create a right but the court held this view to be erroneous and said at page 271:

> "Public policy *was thought** to forbid that the promise *be specifically performed*. Public policy *did not forbid an award of*

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* For the convenience of the Court a copy of the statute, together with amendment is attached hereto as an appendix.

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* All italics appearing herein unless otherwise noted are the writers.

damages if it was broken (*Haggert* v. *Morgan*, 5 N. Y. 422, 427; *Finncane Co.* v. *Board of Education*, 190 N. Y. 7683)."

And in *Hamilton* v. *Home Ins. Co.* 137 U. S. 370, this Court said at page 385, that if the agreement was so phrased that it could not be considered as a condition precedent to an action on the principal contract, it was "well settled that the agreement for submitting the amount to arbitrators is collateral and independent and * * * will support a separate action".

In view of the express provision of the statute and the judicial declaration in reference thereto to the effect that the remedy furnished is one to enforce the contractual right to arbitration, the application of the remedy to the independent contract to arbitrate incorporated in a charter-party does not infringe the jurisdiction of the admiralty court unless at least this independent contract is maritime and subject to the admiralty jurisdiction. The doctrine that the "essential requisite of a contract to bring it within the admiralty jurisdiction" and the "true criterion" for its determination is "an undertaking for the performance of a maritime services" has been so often asserted that it must now be treated as settled. (*North Pacific S. S. Co.* v. *Hall Bros. Co.*, 249 U. S. 119-125; *Peoples Ferry Co. etc.* v. *Beers et al.*, 61 U. S. 393-401; *New Jersey Steam Navigation Co.* v. *Merchants Bank*, 6 How. 344, 392; *The Perseverance*, 19 Fed. Cas. 308; *Pacific Surety Co.* v. *Leatham etc. Co.* 151 Fed. 440, 442, 443; *Amer. & Eng. Encyc. of Law*, Vol. I. p. 660 and cases cited).

It is obvious that a purely personal stipulation to join in the appointment of arbitrators in

New York and to submit to them controversies for determination does not come within the narrow confines of this rule.

The fact that the arbitration agreement is included in a charter-party does not alter the nature of the act agreed to be done. A charter-party while it is characterized generally as a maritime contract is often a bundle of agreements, many of which have no relation to a maritime service and which are unenforceable in an admiralty court. Not only such independent agreements but also agreements of a mixed nature in which are involved some ingredients of a maritime nature are not within the admiralty jurisdiction. In *Plummer* v. *Webb*, 4 Mason 380, Mr. Justice Story laid down the principle, approved by this Court in *Grant* v. *Poillon*, 61 U. S. 162, 168, that "a contract of a *special nature* is not cognizable in the admiralty merely because the consideration of the contract is maritime". In the first mentioned case Justice Story in refusing to assume jurisdiction in admiralty to enforce a covenant for "good tender and parental usage" in an otherwise maritime contract pointed out, in so far as the agreement here under consideration is involved, the judicially accepted line between contracts that were and those which were not enforceable in admiralty. The eminent jurist there said at page 894 (19 Fed. Cas.):

> "I cannot say that the whole contract is here of a maritime nature. There is *mixed up in it obligations ex contractu not necessarily maritime;* and so far the contract is of a special nature. In cases of a mixed nature it is not a sufficient foundation for

admiralty jurisdiction that there are involved *some ingredients of a maritime nature.* The substance of the whole contract must be maritime. If the doctrine of the *courts of common law,* which denies admiralty jurisdiction over *mariners' contracts where there is a special agreement,* had been confined to cases where the consideration for such maritime services was not money but of a *peculiar nature not capable of adjustment in pecunia numerata,* or resting in *special executory stipulations,* there would have been little objection to it. See *Howe* v. *Napier,* 4 Burrows 1944; *De Lorio* v. *Bolt* (Case No. 3766); *Harden* v. *Gordon* (id. 6,047). If a contract were to convey a farm or a house, or to build a mill, or to furnish machines, or to weave cloth, *in consideration of maritime services,* it would hardly be contended that a court of admiralty had authority to *enforce these special stipulations.*"

It has accordingly been held that contracts of a special or personal nature incorporated in a charter-party or other contract normally maritime are not subject to or enforceable in the admiralty but must be enforced if at all in the courts of common law.

The Ada (*C.C.A.*) 250 Fed. Rep. 194 195;

Pacific Surety Co. v. *Leatham* (*C.C.A.*) 151 Fed. 440, at 442-43 and cases there cited.

On any hypothesis no reason exists for holding an agreement to arbitrate to be maritime. Not only does its enforcement not call for the application of any maritime principle but also in the event that a controversy arose as to fraud or mistake in its inception only the common law courts (as distinguished from the admiralty courts) could assume jurisdiction of the controversy or grant any relief in reference thereto.

For the foregoing reasons petitioner contended before the Court of Appeals that the enforcement of this agreement through the application of the state remedy did not deny to the admiralty court its exclusive jurisdiction; that petitioner was not there seeking the adjudication of the alleged rights under the principal contract or the return of the overpaid charter hire, but the specific performance of a contractual right which made *available the agreed remedy* for that purpose, namely, *arbitration*. The court did not deny the soundness of this contention but in answering it said: (Trascript of record page 96)

> "Counsel for the charterers (petitioner) urges that a remedy provided in the state court *that makes available a remedy* for the settlement of a maritime controversy through the specific performance of an agreement for that remedy is not an infringement of the jurisdiction of the admiralty court; that the charterers are not seeking a judgment for overpaid charter hire, etc., but an order decreeing that the arbitration proceed in the manner provided by the contract. Even if we assume

that the proceeding is practically one to enforce specific performance of the arbitration clause of the contract an order granting such relief presupposes the existence of a controversy the subject matter of which is within the jurisdiction of the court granting the order. It would be idle ceremony for the courts to grant an order requiring specific performance of an agreement to arbitrate a dispute where upon an examination of the papers presented as the basis for such an order it is apparent that the subject matter of the controversy which the charterers desire submitted to arbitration clearly arose under maritime clauses in a charter party over which the arbitrators could not assume jurisdiction even if arbitration was ordered."

Inasmuch as the court assumed that petitioner was not seeking a judgment for the return of the alleged overpaid charter hire there was, of course, no controversy before it as to the "liability or non-liability of the owner to the charterer". The remedy sought being one to enforce the arbitration agreement, the only possible controversies that could arise over its enforcement, with the exception of the one as to constitutionality, would be as to whether the agreement was made and if made valid, and if valid whether it was broad enough to cover the disputes in question. All of these controversies are unquestionably within the jurisdiction of the state court. That these are the only questions before the court and that they are questions over which it has jurisdiction was declared in *Berkowitz* v.

Arib & Houlberg, supra. In that case the arbitration statute was assailed as "abridging the general jurisdiction of the Supreme Court". In holding this contention unsound the Court said in part at p. 274:

> "The Supreme Court does not lose a power inherent in its very being when it loses power to aid in the repudiation of a contract concluded without fraud or error, whereby differences are to be settled *without resort to litigation.* For the right to nullify is substituted *the duty to enforce.* Contending parties have contracted that the merits of their controversy shall be conditioned upon the report of arbitrators, as upon any other extrinsic fact, which agreement might prescribe. *Whether they have so contracted is a question which the court must still determine for itself.* * * * *If the contract has not been made or is invalid the court* will proceed as in any other case *to a determination of the merits.*"

If it be assumed that the court's inference as to its lack of jurisdiction arose from its acceptance of respondent's theory that the agreement to arbitrate is maritime because it is included in a charter-party and the controversies to be arbitrated are maritime, then we submit, for the reasons pointed out above, that the court's conclusion is clearly erronous. If the subject matter of the agreement to arbitrate is the subject matter of the controversies that may thereafter arise in reference to the breach of other covenants of the principal contract, the

measure of damages for the breach of the arbitration agreement in an action for damages would not be damages resulting from the breach of that agreement but would be the loss sustained by reason of the alleged breach of the covenants in controversy, an obvious absurdity.

But even if the agreement to arbitrate may be considered maritime, the equity court has jurisdiction to compel its specific performance. The principle is of course well settled that courts of admiralty have no general jurisdiction to administer relief as courts of equity, and cannot compel specific performance. That fact, however, does not deprive the equity courts of their power to decree it in a proper case whether maritime or otherwise. *The Eclipse,* 135 U. S. 599, 608; *Andrews* v. *Essex Ins. Co.*, 1 Fed. Cas 885, 888; *Meyer* v. *Pacific Mail S. S. Co.* 58 Fed. 923; *Dean* v. *Bates,* 7 Fed. Cas. 299, 300; *Kynock* v. *S. C. Ives,* 14 Fed. Cas. 888, 891.

The rule is concisely stated in the last cited case at p. 891, as follows:

> "Courts of admiralty have no general jurisdiction to administer relief as courts of equity. *If a maritime contract is broken* the admiralty concurrent with courts of law can only give damages for the breach of it, *whereas the chancery may compel the party in some cases to specific performance.*
>
> *A court of admiralty has no more power to decree such specific performance than* it has to set aside a contract for fraud or correct a mistake or decree the execution of a trust. *These are matters properly subject to the cognizance of courts of equity.*"

As we have previously pointed out the courts have never denied that the agreement created a right. Its value, however, is one of convenience to which no pecuniary value can be assigned. (In *Re Red Cross Line,* 277 Fed. Rep. 853) Because its economic and convenience value cannot be pecuniarly determined and the *damages* for its breach are therefore nominal, specific performance is the only adequate remedy. "Jurisdiction exists that rights may be maintained". We may assume that jurisdiction is lodged in the admiralty court for no other purpose. When jurisdiction is invoked as here, that a right may not be maintained, it is invoked to defeat the end and purpose for which jurisdiction exists For these reasons we believe that the principle announced in *Steamboat Company* v. *Chase,* 16 Wall. 522, is as truly applicable to the facts in this case as in that one. In that case the admiralty jurisdiction was invoked to defeat the recovery of damages by an administrator through a state created remedy for the death of his decedent occasioned by the negligence of the defendant on navigable waters. The Court there said at p. 530:

> "When no remedy exists for an injury in the admiralty courts the fact that such courts exist and exercise jurisdiction in other causes of action, leaves the state court as free to exercise jurisdiction in respect to an injury not cognizable in the admiralty as if the admiralty courts were unknown to the constitution and had no existence in our jurisprudence."

We do not believe that this Court will on the plea now put forward that it preserve from infringement the jurisdiction of the admiralty court, sanction the extension of the ancient policy that was thought to forbid the specific performance of an arbitration agreement so as to prevent that result in the forum of a state, when that state by legislative enactment has repudiated the existence of such a public policy. The supposed policy itself is one of the common law, not of the admiralty. It has been followed in the admiralty as in the state courts in deference to precedent, although with frequent protest. (*U. S. Asphalt Refining Co.* v *Trinidad Lake Petroleum Co.*, 222 Fed. Rep. 1006; *Atlantic Fruit Co.* v. *Red Cross Line*, 276 Fed. Rep. 319.) As was well said by the court in *Berkowitz* v. *Arbib & Houlberg* (*supra*) at p. 276:

> "The ancient rule, with its exceptions and refinements was criticised by many judges as anomalous and unjust (*D. & H. C. Co.* v. *Pa. Coal Co.* (*supra*); *Fudeckor* v. *Guardian Mutual Life Ins. Co.*, 62 N. Y. 392,399; *U. S. Asphalt Refining Co.* v. *Trinidad Lake Petroleum Co.*, 222 Fed. Rep. 1006, and cases there cited). It was followed with frequent protest in deference to early precedent. Its hold even upon the common law was hesitating and feeble."

To hold that this old policy is of such potent force that it prevents the enforcement of the agreement in a jurisdiction that has repudiated it, because the rule still exists in a court that has

concurrent jurisdiction of the controversies agreed to be arbitrated, is unnecessary and we submit without warrant.

Further the public policy of the admiralty court is not petrified. And as was said by Circuit Judge Hough, in the concurring opinion in *Aktieselskabet Korn, etc.*, v. *Rederiaktiebologet, etc.*, 250 Fed. Rep. 935, at 939, "Whether the rule * * * can long survive historical and logical criticism" is doubtful. But even if it should be abandoned by the Court or if the Congress by legislative enactment should repudiate it, the admiralty court is still powerless specifically to enforce the agreement and this remedy must be sought in the equity court. And in view of the fact that specific performance is a remedy belonging peculiarly to the equity courts, it is at least doubtful whether Congress could constitutionally extend the jurisdiction of the admiralty court so as to confer this power upon it.

The concluding sentence of the extract from the opinion of the New York Court of Appeals in the case at bar as quoted above to the effect that the arbitrators could not assume jurisdiction to determine the liability or non-liability of the owner to the petitioner because the controversy arose under maritime clauses in a charter party, is an unprecedented and we submit an unwarranted extension of the provisions conferring jurisdiction on the Admiralty Court, and, if true, will effectually bar the enforcement of an award by arbitrators under any circumstances. No inhibition exists in those provisions against parties' settling maritime controversies except by litigation in the Admiralty Court. Clearly the "exclusive" jurisdiction ex-

ists *only* where there is *a litigation in court* of maritime controversies. If arbitrators do not have jurisdiction to determine the rights and liabilities in such disputes, their award in reference thereto would be void and unenforceable The Admiralty Courts, however, have always considered as valid, and upheld, the awards in such controversies. Indeed the Admiralty Courts have gone much further. In *Toledo Steamship Co.* v. *Zenith Transportation Company*, 184 Fed. Rep. 391 (C. C. A.) one of the parties to the arbitration agreement sought to avoid the effect of the agreement after a decision of liability had been made by the arbitrators but before damages had been awarded. The court however refused to entertain the plea that the arbitration had been a nullity and obliged the parties to rest content with the relief thereby afforded. And no cause could have been more maritime than the one there involved for it was a case of collision damages resulting from the collision of two ships on navigable waters.

Whether a court intervenes to decree the specific performance of the agreement or not, the jurisdiction of the arbitrators, that is the power to hear and determine, results from the agreement of the parties, not from the mandate of the court, and hence their jurisdiction is as valid in the one case as in the other.

The fact that a forum other than the admiralty may be called upon to determine the *event* and *measure* of *damages* for the *breach of maritime covenants* has never been held to be an objection to the enforcement of a non-maritime contract in the state court. Indeed the direct opposite was inferentially held in *Pacific Surety Co.* v. *Lea-*

tham &c. Co. (C. C. A.) 141 Fed. 440. In that case a charter-party contained covenants substantially similar to the one herein. It also recited that a bond should be furnished for the performance of these covenants. The bond was furnished and subsequently the bonding company was proceeded against by libel in the admiralty court for the alleged breach of the covenants. A decree was entered against the bonding company, which on appeal was reversed and the libel dismissed for want of jurisdiction. In holding that a suit on the bond for the breach of the terms of the charter-party could not be maintained in the admiralty court the Court said in part at page 443:

> "True the obligations of the surety hinges upon the breach of a contract (maritime) on the part of the principal, and the charter-party is thus brought in by way of evidence of the breach, and of liability to respond in damages under the covenants of the bond. The direct subject-matter of the suit is the covenant to pay such damages, which neither involves maritime service nor maritime transactions; *and we are of the opinion that the mere fact that the event and measure of liability are referable to the charter-party* does not make the bond a maritime agreement nor its obligations maritime in the jurisdictional sense."

Surely if the admiralty court has no jurisdiction to enforce such an agreement, it can not be reasonably contended that the state court may not do so merely because in enforcing it

the question of liability or non-liability under the charter-party will be determined by a forum other than the admiralty.

That it is not the policy of the law to compel parties *to litigate disputes* maritime or otherwise was the conclusion of the Supreme Court of Oregon in the recent case of *West* v. *Kozer*, 206 Pacific Reporter, 542. In that case the Court held that the provisions of the Oregon Workmen's Compensation law goverened as to maritime torts where the parties in effect had adopted that law as a part of their contract.

The Court while basing its determination to a large extent upon the expression of this Court in *Grant Smith-Porter Ship Co.* v. *Rhode*, 42 Sup. Ct. 187 was unable to find in *Knickerbocker Ice Co.* v. *Stewart* 253 U. S. 149 any objection to the enforcement of an *agreement* substituting other rights and remedies for those furnished by the Admiralty court. Speaking of the latter case the Court said:

> "The Supreme Court of the United States held in substance that it was not competent for Congress to subtract from the admiralty jurisdiction conferred by the Constitution.
>
> We do not understand the Court as holding that an employer and employee may not *as between themselves contract* to take out a form of accident insurance which shall be the measure of the liability of the employer in case of accident and *precludes the necessity of litigation* in the federal court * * *".
>
> It is not the policy of the law international or otherwise *to pull parties into court* by the hair *when they have agreed between themselves upon a method of keeping out.*"

Arbitration is a quick economic and common-sense method of settling controversies without resorting to wasteful litigation. It is an ancient *common law* method of enforcing rights and redressing wrongs (*Corpus Juris* Vol. 5 p. 16; Blackstone Commentaries, Vol. 3, p. 14). There is no valid reason why parties should not settle their controversies, maritime or non-maritime in this manner. Neither is there any reason why their agreement to do so should not be enforced.

The old rule prohibiting the enforcement of the agreement was supposed to have had its inception in the jealousy of the courts of their jurisdiction. "A more unworthy genesis," as remarked by Judge Hough in *U. S. Asphalt Co.* v. *Trinidad etc.*, (*supra*) "cannot be imagined" Certainly no such policy can be said to exist today, when the crowded condition of the court calendars delays for years the hearing of a case, which fact in many instances results in a denial of justice.

We believe that this Court may take judicial notice of the trend of legislation to abolish the old rule. If the large class of disputes, growing out of charter parties, or other contracts normally maritime cannot be submitted to or determined by arbitrators the value of this legislation, especially in seaboard states, is greatly minimized. Furthermore in such states contracts that in the main are non-maritime, either contain many maritime covenants or incorporate by reference charter-parties or ocean bills of lading. A common example of this class of contracts is found in contracts for the sale of coal, phosphate sulphur or other minerals that in

addition to the ordinary covenants and warranties of sale contain also the usual maritime covenants in reference to loading, carriage, and other covenants usually found in charter-parties. These contracts almost invariably contain arbitration agreements similar to the one herein. The disputes growing out of such contracts may be maritime or non-maritime or both. Indeed the settlement of one of two disputes may be dependent on the determination of another; one maritime, the other non-maritime. The legal problems arising from an attempt to define with accuracy the disputes arising under such contracts that in their determination involve no maritime question, would probably precipitate as much litigation as the agreement was designed to avoid. We do not believe that this Court will find any warrant in the provisions conferring jurisdiction on the admiralty court for the justification of any such result.

POINT II.

The Court of Appeals of the State of New York erred in holding that, because the subject of the controversy existing between the parties is one pertaining to navigation, therefore the question of liability or non-liability of the vessels chartered owner is within the exclusive jurisdiction of the Courts of admiralty.

The respondent contended in the state court that the statute created a new remedy for the

violation of the covenants in the principal contract and that petitioner was seeking in the state court the return of the overpaid charter hire. Respondent sought to justify this contention with a statement of the New York Court of Appeals in the opinion rendered by it in *Berkowitz* v. *Arbib & Houlberg, (supra)* to the effect that *arbitration* is a *remedial procedure* and that the statute had made two remedies *available* to redress the violation of a contract where formerly there was one.

This same contention was made in the United States District Court after the suit had been removed to that court in order to sustain the allegation that it was one that involved a controversy in which the value of the matter in dispute was at least of the jurisdictional amount of $3000.00. That court however in remanding the suit to the state court held that it was not one for the return of the overpaid charter hire, but one to enforce the agreement to arbitrate and inasmuch as that agreement had no determinable pecuniary value the jurisdictional amount was not involved (*Red Cross Line*, 277 Fed. Rep 853). In this connection the Court said in part at page 856:

> "* * * The overpaid charter hire is not here the matter in dispute but solely the right to specific performance of the agreement to arbitrate. If the arbitration is ordered the function of the court so far as the proceeding instituted goes ceases."

The Court of Appeals did not rule specifically on this question. It did not however, although

the opinion of the District Court was indirectly a part of the record and incorporated in petitioner's brief, deny that the conclusion of the Federal Court was correct. Instead, it accepted the contention of petitioner to that effect as pointed out herein in Point I, but concluded that to enforce the agreement in the state court would deny to the admiralty court its exclusive jurisdiction.

Even if it be assumed, however, for the purpose of argument that the Court of Appeals accepted respondent's theory, viz; that the order directing the arbitration to proceed and the proceedings had before the arbitrators were a mere part of the remedy provided in the state court and that the resulting award was a judgment of that court from which an appeal lay as in any other case, the whole proceeding is nothing more than an ordinary suit for damages for the breach of a contract the amount of which by agreement is determined by arbitrators. In other words, if the court assumed that from the time when it took jurisdiction to enforce the arbitration agreement it retained it until the award was made a judgment and that the remedy sought was in fact one to recover the loss sustained by reason of the alleged breach of the covenants of the principal contract, it does not differ from any other remedy *in personam* except that the court enforces by an auxiliary process authorized by the state statute the agreement that the merits of the controversy and judgment thereon shall be conditioned upon the report of arbitrators just as without the statute the court might condition its judgment upon any other extrinsic fact that agreement has prescribed.

The Court of Appeals in its opinion in the case at bar after quoting the provisions conferring jurisdiction on the admiralty court and discussing the nature of the questions raised by the controversy, concludes:

> "* * * the subject of the controversy existing between the parties is clearly one pertaining to navigation, consequently the *question of liability or non-liability of the owner to the charterer* is within the *exclusive* jurisdiction of the courts of admiralty."

We submit that the conclusion of the court as thus announced discloses clearly that it has misapprehended the effect of the provisions conferring jurisdiction of maritime causes on the admiralty court. The grant of judicial power in cases of admiralty and maritime jurisdiction has never been construed as excluding the jurisdiction of the common-law courts over civil causes simply because the admiralty court has unquestionable jurisdiction over those causes. The affect in the grant of jurisdiction of the clause "saving to suitors in all cases the right of a common-law remedy where the common-law is competent to give it" has always been held to confer concurrent jurisdiction on the state courts to furnish a common-law remedy in civil cases of maritime origin (*New Jersey Steam Navigation Co.* v. *Merchants Bank*, 6 How. 344, 390; *Propeller Genesee Chief* v. *Fitzkirk*, 12 How. 443, 448; *The Belfast*, 7 Wall 622, 644; *Leon* v. *Galceran*, 11 Wall, 185, 187-188; *Schoonmaker* v. *Gilmore*, 102 U. S. 118; *Insurance Co.* v. *Durham*, 11 Wall 1-32; *Manchester* vs. *Massachusetts*,

138 U. S. 262). The jurisdiction of the state court being concurrent to this extent the "*question of liability or non-liability*" in maritime controversies is of course not within the "*exclusive*" jurisdiction of the admiralty court. The question to be determined is not, therefore, as was stated by the Court of Appeals "whether or not the controversy between the parties is one of admiralty or of state jurisdiction" but, in the event that the remedy in question is one to redress the violation of the principal contract, whether that remedy falls within the saving clause, saving to suitors in all cases the right of a common-law remedy when the common-law is competent to give it. This determination calls for the construction of a federal statute in relation to the remedy in question and this Court of course is no more bound by the determination of the state court to the effect that the remedy is not embraced within the saving clause, than it would be if the state court had held the reverse. And it is, we submit, particularly important that the determination of the Court of Appeals be reviewed because it is predicated upon what we believe to be an unwarranted and erroneous premise as to jurisdiction.

The earlier cases in which the courts were called upon to determine the meaning of this clause were cases in which state statutes had attempted to confer upon the State courts the peculiar remedy of *a proceeding in rem* for causes cognizable in the admiralty court either *in rem* or *in personam*. Such were the cases of *The Moses Taylor*, 4 Wall 411; *Hine* v. *Trevor*, 4 Wall 555; *The Belfast*, 7 Wall 624; *The Lottawana*, 21 Wall 558; *The J. E. Rumble*, 148, U. S. 1; *The Glide*, 167 U. S. 606. In these

cases it was pointed out that the violation of the exclusive jurisdiction of the Admiralty resulted from the attempt to provide in the state court for *maritime* causes a remedy peculiarly in the province of the Admiralty Court.

The first attempt however to chrystalize by definition the proceedings that do and that do not violate the exclusive jurisdiction of the admiralty is found in *Knapp Stout & Co.* v. *McCaffrey*, 177 U. S. 638. In that case McCaffrey had a half raft of lumber in his possession at Boston Bay, Illinois, which was part of a raftage that he had towed under a *concededly maritime* contract from Stillwater, Minnesota, to St. Louis. His towage charges being unpaid McCaffrey filed a bill in equity in the Illinois State Court to foreclose his lien, the *local law* allowing the enforcement of possessory liens in equity. A decree was entered in his favor for the sum of $3,643.17, which was affirmed by the Supreme Court of the State. This court in reviewing the determination of the state court stated in effect on page 644 that inasmuch as the proceeding taken was not a common-law action, but a suit in equity, the real question before it was "whether the proceeding taken is within the exception 'of saving to suitors in all cases the right of a common-law remedy where the common-law is competent to give it.'" The court then pointed out that the reservation was not of an action at common-law but a common-law remedy; that a remedy does not necessarily imply an action; but that it is the means employed to enforce a right or redress an injury. The court concluded that the proceeding taken was therefore within the saving clause and laid down the principle in re-

ference to the exclusive jurisdiction of the admiralty court on page 648 as follows:

> "The *true distinction* between such *proceedings* as are and such as are not invasions of the *exclusive admiralty jurisdiction* is this: If the cause of action be cognizable in admiralty and the suit be *in rem* against the thing itself though a monition be also issued to the owner the proceeding is essentially one in admiralty. If, upon the other hand, the cause of action be not one of which a court of admiralty has jurisdiction *or if the suit be in personam against an individual defendant* with an auxiliary attachment against a particular thing or against the property of the defendant in general it is *essentially* a proceeding *according to the course of the common law* and within the saving clause * * *."

In *Leon* v. *Galceran*, 11 Wall. 185, it was held that a suit for wages on a mariner's contract in the State Court and the concurrent issuance of a writ of sequestration authorized by the Louisiana statute against a vessel as security to respond to a judgment if recovered against her owner, was not an invasion of the exclusive admiralty jurisdiction but that the suit was one *in personam* and within the saving clause. Likewise in *Rounds* v. *Cloveport Foundry*, 237 U. S. 303 the institution of a suit *in personam* in the state court on a maritime contract and the concurrent issuance therein of a process of attachment under the Kentucky Statute was held not to violate this exclusive jurisdiction.

It is clear therefore that, in a suit on a maritime contract against a *person* to recover a *money judgment*, the mere issuance of an auxiliary process, *authorized by a state statute* in *aid* of the suit is not an infringement of the exclusive jurisdiction of Admiralty, but is a suit *in personam* and within the saving clause.

It is to be noted that the cases above referred to are those in which *remedies only* were considered and likewise remedies for the enforcement only of rights and obligations recognized and enforceable under the Maritime Law. The principle to be drawn from them is we believe accurately stated in *Corpus Juris* Vol. 1, p. 1253 as follows:

> "The clause saving to suitors a common law remedy where the common-law is competent to give it *is intended to save the remedy or right of action in those courts which proceed according to the course of the common-law as distinguished from Admiralty proceedings* and the words 'common-law remedy' do not necessarily imply an action or remedy in a common-law court *but are equivalent to the means employed to enforce a right or redress an injury.*"

See also to the the same effect *Johnson* v. *Westerfield* 143 Ky. 10-14; *Chase* v. *American Steamboat Co.* 9 R. I. 419, aff'd. 16 Wall 522.

To apply this principle to the remedy here sought for, even if it be considered as one for the return of the overpaid charter hire, it is a remedy clearly within the scope of the saving clause. The proceeding is instituted by the ser-

vice of process on a person; it is to redress the alleged breach of the covenants of the charter party; it ends in an ordinary money judgment against a person, enforceable in the usual manner. It differs from an ordinary suit *in personam* only in that there is issued during the proceeding a supplemental process, authorized by the statute to enforce specifically the agreement that judgment shall be conditioned upon the report of arbitrators.

We are not unmindful of the decisions of this Court in *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, and *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, much relied upon and quoted from by the respondent in the State Court. The statement of the court in the Jensen case that "the remedy which the compensation statute attempts to give is of a character wholly unknown to the common-law incapable of enforcement by the ordinary *process* of *any court*" can have no application to the remedy here sought, even if considered as one to recover the overpaid charter hire. Aside from this fact, however, we believe that the Court's remarks are not to be considered apart from the statute that it then had under consideration. Not only did that statute create a remedy, as defined by the court above, but *ex proprio vigore* it *substituted statutory rights* and *liabilities*, for those recognized and for which a remedy existed, in the admiralty court and made them enforceable exclusively by the remedy thus created. As stated by this Court in the *Knickerbocker* case, *supra*, "The state enactment prescribes *exclusive rights and liabilities*, undertakes to secure their observance by *heavy penalties* and *onerous conditions* and provides novel remedies

incapable of enforcement by an admiralty court."

The distinction is obvious between such a statute and the one here under consideration, which merely makes available an old equity process in a new class of cases in a suit to enforce contractual rights.

Furthermore, as we read the case of *Grant Smith-Porter Ship Co.* vs. *Rhode* 42 Sup. Ct. 157, this Court found no violation of the exclusive admiralty jurisdiction in the enforcement of an *agreement* providing exclusive rights and liabilities and the remedy for their enforcement, although by such enforcement a party was deprived of the rights and remedies which he otherwise would have had in the admiralty court. *A fortiori* it would seem that no violation would result in enforcing an *agreed* method of determining the merits of a controversy in a suit for the enforcement of contractual rights and liabilities

The question therefore in the last analysis resolves itself into this: Does the issuance of a supplementary process, specifically to enforce a term of the contract upon which suit is brought in a court of concurrent jurisdiction violate the exclusive jurisdiction of the admiralty, merely because in a suit on the contract in its forum a policy exists against such specific enforcement? If the *policy* of the Admiralty Court is to control the policy of the state forum in the application of a remedy in a cause of concurrent jurisdiction, it is a distinct change of the general rule that the policy of the forum determines in matters of remedies. It is well known that the policies of the Federal Court and the New York courts differ in reference to the enforcement of an agreement exempting a carrier from liability for negli-

gence. It has, however, never been suggested that in a case of concurrent jurisdiction the policy of the state would not control in its forum. Neither do we believe that this Court will find in the provisions conferring jurisdiction on the admiralty court any justification for extending a rule of policy that in the nature of things belongs peculiarly and exclusively to the forum.

POINT III.

The Court of Appeals of the State of New York erred in holding that to enforce the arbitration agreement in the State Court would "destroy a rule of uniformity".

The Court of Appeals cited as authority for the above holding the cases of *Southern Pacific Company* v. *Jensen* (*supra*) and *Knickerbocker Ice Company* v. *Stewart* (*supra*). We submit that the court has drawn from these cases an unwarranted conclusion.

We start with the conceded premise that the sole function of the statute is to furnish a remedy. A remedy in a state court for a maritime cause however has never been condemned on the theory that it destroyed uniformity. The saving of a common-law remedy not only saved the remedies of the several states within their several jurisdictions existing at the time of the passage of the Judiciary Act (which it has never been supposed were uniform) but also, as has been pointed out, statutory remedies subsequently enacted for maritime contracts or torts, so long as they did not attempt to parallel the peculiar

remedies in the admiralty established for such cases (*Leon* v. *Galceran* (*supra*); *Knapp Stout Co.* v. *McCaffrey* (*supra*); *Rounds* v. *Cloveport Foundry* (*supra*); *Chase* v. *American Steamboat Company* (*supra*).

We read in the Jensen and Stewart cases no overturning of this rule. The violation of the uniformity rule referred to in those cases resulted from the attempts made to substitute statutory *rights and liabilities* for rights and liabilities definitely fixed by the maritime law. As was said by the court in the Knickerbocker case at page 159 referring to its holding in the Jensen case:

> "Thus we distinctly approved the view that the original saving clause conferred *no substantive rights* and did not authorize the states to do so. It referred only to *remedies* and to the extent specified permitted continued enforcement by the State Court of rights and obligations founded on maritime law."

That the destruction of uniformity condemned in the Jensen case resulted from the attempt made by the state to legislate *rights and liabilities* into maritime matters where the subject of legislation "admits and requires uniformity of *regulation*," was specifically pointed out by this Court at page 217, as follows:

> "If New York can *subject* foreign ships coming into her ports *to such obligations as those enforced by her compensation statute* other states may do likewise. The necessary

> consequence would be the destruction of the very uniformity in respect to maritime matters which the constitution was designed to establish and freedom of navigation between the states and foreign countries would be seriously hampered and impeded."

Again this Court in the recent case of *State Industrial Commission* v. *Nordenholt Corporation,* (42 Sup. Ct. Rep. 473) in discussing the uniformity rule, referring to the Jensen case said at page 475:

> "In Jensen's case *rights and liabilities* were definitely fixed by *maritime rules whose uniformity was essential.* With these the *local law came into conflict.*"

Thus, as we read the Jensen and Stewart cases, as well as other cases in which the uniformity rule has been applied, the statutes there considered were condemned as offending the rule because they wiped out rights secured by the maritime law and undertook to impose new liabilities; the result was an interference with the proper harmony and uniformity of the maritime law in its international and inter-state relations The statute here under consideration, however, does not impair or change the rights or liabilities existing under the maritime law or any law. Neither does it *ex proprio vigore* impose a new and compulsory remedy for their enforcement. Instead of depriving parties of rights under the maritime law, it merely makes available an auxiliary remedy in the State Court in the enforcement of contractual rights. It is the agreement

of the parties, not the mandate of the statute, that brings about the relinquishment of the usual methods for determining the merits of the dispute. If parties wish the usual method for determining merits to govern, they are not compelled to contract for a different one. If they do so contract that contract is enforced as any other contract would be. We can read in no decided case of this Court any suggestion that the uniformity rule may be invoked to deprive a party of a contractual right or shield another from the performance of his contractual obligation.

That a similar remedy may not exist in all the states for the enforcement of a right has as we have shown never been an objection to its enforcement. *Knapp Stout Co.* v. *McCaffrey* (*supra*) illustrates the point. It was conceded in that case that the remedy there invoked was one sanctioned *only by the local law*, but that fact was not considered as an objection to its use.

The fact that the admiralty court may refuse to adopt a part of the state practice in its courts on the ground that to do so would introduce confusion and result in a lack of uniformity in the practice in the federal forum is of course no reason for condeming the remedy sought in the state court. The admiralty court presumably may exclude much of a state court practice on that ground. The statutory remedy of a Bill of Particulars is illustrative. Although the admiralty court refuses to apply such a remedy in it forum because to do so would result in a lack of uniformity of practice (*Foster* v. *Compagnie Francaise de Navigation a Vapeur*, 219 Fed. 351), it has never been suggested that this fact would be a reason for excluding its use in a case

of concurrent jurisdiction in the state court. We presume that the admiralty jurisdiction concedes as much independence to the state jurisdiction in this respect as it exacts for itself.

It seems to us that the state court's independence of practice in a cause of concurrent jurisdiction was definitely conceded in *Chelentes* v. *Luckenbach S. S. Co.*, 247 U. S. 372. In that case the court pointed out at page 379 that the *substantive* rights under a maritime contract "must be the same *in every court*, maritime or common law," but concludes:

> "The only difference between a proceeding in the one court or the other would be that the *remedy would be regulated by the lex fori.*"

From whatever angle therefore the decision of the Court of Appeals may be viewed, it is supported neither by principle nor precedent. And in view of the confusion and uncertainty as well as injustice that may result from allowing such a decision to stand, we submit that the same should be reversed.

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APPENDIX.

CHAP. 275.

AN ACT in relation to arbitration, constituting chapter seventy-two of the consolidated laws.

Became a law April 19, 1920, with the approval of the Governor.

Passed, three-fifths being present.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

CHAPTER 72 OF THE CONSOLIDATED LAWS.

ARBITRATION LAW.

Article 1. Short title (§1).

2. General provisions (§§2-6).

3. Application of certain sections of the code of civil procedure and repeal of certain other provisions thereof (§§7-9).

4. Time of taking effect (§10).

ARTICLE 1.

SHORT TITLE.

Section 1. Short title.

Section 1. Short title. This chapter shall be known as the "Arbitration Law."

ARTICLE 2.

General Provisions.

Section 2. Validity of arbitration agreements

3. Remedy in case of default.

4. Provision in case of failure to name arbitrator or umpire.

5. Stay of proceedings brought in violation of an arbitration agreement or submission.

6. Applications to be heard as motions.

§ 2. VALIDITY OF ARBITRATION AGREEMENTS. A provision in a written contract to settle by arbitration a controversy thereafter arising between the parties to the contract, or a submission hereafter entered into of an existing controversy to arbitration pursuant to title eight of chapter seventeen of the code of civil procedure, shall be valid, enforcible and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.

§ 3. REMEDY IN CASE OF DEFAULT. A party aggrieved by the failure, neglect or refusal of another to perform under a contract or submission providing for arbitration, described in section two hereof, may petition the supreme court, or a judge thereof, for an order directing that such arbitration proceed in the manner provided for in such contract or submission. Eight days' notice in writing of such application shall be served upon the party in default. Service

thereof shall be made in the manner provided by law for personal service of a summons. The court, or a judge thereof, shall hear the parties, and upon being satisfied that the making of the contract or submission or the failure to comply therewith is not in issue, the court, or the judge thereof, hearing such application, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the contract or submission. If the making of the contract or submission or the default be in issue, the court, or the judge thereof, shall proceed summarily to the trial thereof. If no jury trial be demanded by either party, the court, or the judge thereof, shall hear and determine such issue. Where such an issue is raised, any party may, on or before the return day of the notice of application, demand a jury trial of such issue, and if such demand be made, the court, or the judge thereof, shall make an order referring the issue or issues to a jury in the manner provided by law for referring to a jury issues in an equity action. If the jury find that no written contract providing for arbitration was made or submission entered into, as the case may be, or that there is no default, the proceeding shall be dismissed. If the jury find that a written contract providing for arbitration was made or submission was entered into and there is a default in the performance thereof, the court, or the judge thereof, shall make an order summarily directing the parties to the contract or submission to proceed with the arbitration in accordance with the terms thereof.

§ 4. PROVISION IN CASE OF FAILURE TO NAME ARBITRATOR OR UMPIRE. If, in

the contract for arbitration or in the submission, described in section two, provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then, upon application by either party to the controversy, the supreme court, or a judge thereof, shall desig nate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said contract or submission with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided, the arbitration shall be by a single arbitrator.

§ 5. STAY OF PROCEEDINGS BROUGHT IN VIOLATION OF AN ARBITRATION AGREEMENT OR SUBMISSION. If any suit or proceeding be brought upon any issue otherwise referable to arbitration under a contract or submission described in section two, the supreme court, or a judge thereof, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under a contract containing a provision for arbitration or under a submission described in section two, shall stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement.

§ 6. APPLICATIONS TO BE HEARD AS MOTIONS. Any application to the court, or a

judge thereof, hereinunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

ARTICLE 3.

Application of Certain Sections of the Code of Civil Procedure and Repeal and Amendment of Certain Other Provisions Thereof.

Section 7. Repeal of provisions of code of civil procedure.

8. Application of certain sections of code of civil procedure.

9. Amendment of certain section of code of civil procedure.

§ 7. REPEAL OF PROVISIONS OF CODE OF CIVIL PROCEDURE. Sections twenty three hundred and eighty-three, twenty-three hundred and eighty-four and twenty-three hundred and eighty-five of chapter seventeen, title eight of the code of civil procedure are hereby repealed.

§ 8. APPLICATION OF CERTAIN SECTIONS OF CODE OF CIVIL PROCEDURE. The provisions of Sections twenty-three hundred and sixty-five to twenty-three hundred and eighty-six of the code of civil procedure, both inclusive, except sections twenty-three hundred and eighty-three, twenty-three hundred and eighty-four and twenty-three hundred and

eighty-five, so far as practicable and consistent with this chapter, shall apply to an arbitration agreement under this chapter, and for such purpose the arbitration agreement shall be deemed a submission to arbitration. Wherever in such sections reference is made to the court specified in the submission, the supreme court shall have jurisdiction of the subject matter if no court be specified in the arbitration agreement.

§ 9. AMENDMENT OF CERTAIN SECTION OF CODE OF CIVIL PROCEDURE Section twenty-three hundred and eighty-two of the code of civil procedure is hereby amended to read as follows:

§ 2382. Where a party dies after making a submission either as prescribed in this title or otherwise, if the submission contains a stipulation, authorizing the entry of a judgment upon the award, the award may be confirmed, vacated, modified, or corrected, upon the application of, or upon notice to, his executor or administrator, or a temporary administrator of his estate; or, where it relates to real property, his heir or devisee, who has succeeded to his interest in the real property. Where a committee of the property, or of the person, of a party to a submission is appointed, the award may be confirmed, vacated, modified, or corrected, upon the application of, or notice to, a committee of the property; but not otherwise. In a case specified in this section, a judge of the court may make an order, extending the time within which notice of a motion to vacate, modify, or correct the award must be served. Upon confirming an award, where a

party has died since it was filed or delivered, the court must enter judgment in the name of the original party; and the proceedings thereupon are the same, as where a party dies after a verdict.

ARTICLE 4.

Time of Taking Effect.

Section 10. Time of taking effect.

§ 10. Time of taking effect. This act shall take effect immediately.

Chap. 14.

AN ACT to amend the arbitration law, in relation to arbitration agreements.

Became a law March 1, 1921, with the approval of the Governor.

Passed, three-fifths being present.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section two of chapter two hundred and seventy-five of the laws of nineteen hundred and twenty, entitled "An Act in relation to arbitration, constituting chapter seventy-two of the consolidated laws," is hereby amended to read as follows:

§ 2. VALIDITY OF ARBITRATION AGREEMENTS. A provision in a written contract to settle by arbitration a controversy thereafter arising between the parties to the contract, or a submission hereafter entered into of an existing controversy to arbitration pursuant to title eight of chapter seventeen of the code of civil procedure, or article eighty-three of the civil practice act shall be valid, enforcible and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.

§ 2. Section eight of such chapter is hereby amended to read as follows:

§ 8. APPLICATION OF CERTAIN SECTIONS OF CODE OF CIVIL PROCEDURE AND THE CIVIL PRACTCE ACT. The provisions of sections twenty-three hundred and sixty-five to twenty-three hundred and eighty-six of the code of civil procedure, both inclusive, except sections twenty-three hundred and eighty-three, twenty-three hundred and eighty-four and twenty-three hundred and eighty-five, and the corresponding sections of the civil practice act, namely sections fourteen hundred and ten to fourteen hundred and thirty-one, both inclusive, except sections fourteen hundred and twenty-eight, fourteen hundred and twenty-nine and fourteen hundred and thirty, so far as practicable and consistent with this chapter, shall apply to an arbitration agreement under this chapter, and for such purposes the arbitration agreement shall be deemed a submission to arbitration. Wherever in such sections reference is

made to the court specified in the submission, the supreme court shall have jurisdiction of the subject matter, if no court be specified in the arbitration agreement.

§ 3. This act shall take effect April fifteenth, nineteen hundred and twenty-one.